

MAINE STATE LEGISLATURE

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yes

October 4, 1974

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Maine Guarantee Authority

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Conflicts of Interests of the Authority

SYLLABUS:

1. The review by the Maine Guarantee Authority of a municipal revenue bond proposal to finance the purchase of property acquired by the Authority through default and foreclosure (pursuant to 10 M.R.S.A. § 806) does not involve a conflict of interest.

2. It is not permissible for the Authority to guarantee (under the statutes pertaining to the former MIBA) the mortgage of a plant constructed with Community Industrial Building funds. The review of a municipal revenue bond proposal to finance municipal and eventual private purchase of a "Community Industrial Building" constructed pursuant to 10 M.R.S.A. § 671, et seq. does not necessarily involve a conflict of interest.

FACTS:

Situation #1: The Authority owns an industrial plant through default and foreclosure under the guaranteed mortgage (MIBA) program. It is proposed that a municipality purchase the foreclosed property from the Authority with proceeds of a revenue bond sale. Under 30 M.R.S.A. §§ 5325, et seq. (The Municipal Securities Approval Act), the Authority must approve any municipal revenue bond issue.

Situation #2: The Maine Guarantee Authority has advanced moneys from its Community Industrial Building Fund (10 M.R.S.A. § 671, et seq., P.L. 1973, c. 633, § 26) to a local development corporation to construct a "speculation" building to attract industry. The Authority holds as security a first mortgage on the property. Under the statute this loan must be repaid to the CIB fund within 90 days of occupancy by an industrial buyer or tenant, 10 M.R.S.A. § 676. A plan under consideration is for the local development corporation to apply to the MGA for a guaranteed mortgage as part of financing the repayment of the C.I.B. loan.

QUESTIONS AND ANSWERS:

1. May the Maine Guarantee Authority as owner of foreclosed property it seeks to sell (under 10 M.R.S.A. § 701, et seq.), review and approve the municipal revenue bond issue designed to finance the acquisition of such property by a municipality or private party (30 M.R.S.A. § 5325 et seq.)? Yes.

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2a. May the Authority, as mortgagee of property under the CIB program (10 M.R.S.A. § 671, et seq.) guarantee the commercial mortgage of a subsequent purchaser under the mortgage insurance program (10 M.R.S.A. § 701, et seq.)? No.

2b. Can the Maine Guarantee Authority, as mortgagee of property under the Community Industrial Building program (10 M.R.S.A. § 671, et seq.) review and approve a revenue bond issue proposal designed to finance the acquisition of such property by a municipality or private party (under 30 M.R.S.A. § 5325, et seq.)? Yes.

REASONS:

1. The consolidation of three existing boards into one Authority was intended to achieve efficiency in the operation of these programs, to reduce membership from a total of 25, to one board of nine, and to "make more effective the laws relating to the two authorities and the board." (Statement of Fact, L.D. 2033, 1973).

It is clear from the statute and legislative history that the Legislature intended no change in existing programs through this amalgamation move, but expected that a new streamlined board would continue to make choices and decisions as specified by the policies and standards existing in Title 10, Chap. 103, Title 10, Chap. 701, and Title 30, Chap. 242. In light of the consolidation statute and its purpose, there is no indication that the Legislature intended to diminish the scope of existing opportunities for enterprise aid through consolidation.

While no explicit standards or procedures are provided by the chapter, the Authority (qua MIBA) has the implicit duty to dispose of property acquired through foreclosure in a manner which will benefit the State according to the policies of MIBA legislation, 10 M.R.S.A. § 806. In this connection the Authority would presumably consider and weigh such factors as the offered purchase price, the defaulted mortgage loss, future payments on the defaulted mortgage, the extent of depletion of the insurance fund and jobs which a sale would create.

On the other hand, the Authority (qua MIBA) sitting in review of a revenue bond proposal has explicit statutory duties to fulfill. Criteria for approval require specific findings of fact: the project must not create a competitive advantage to an existing industry; adequate provision must be made to meet the increased demand on public facilities; there must be clear economic justification for the relocation of an existing project (30 M.R.S.A. § 5328).

Since the criteria for each decision are different, there would appear to be no impenetrable barrier to the MGA fulfilling the requirements of each.

2. The Community Industrial Building program was intended to provide communities seed capital from a nonlapsing revolving fund administered by MGA, to construct speculation buildings. The statute anticipates that a local development corporation will dispose of the property to a ready purchaser or tenant. Repayment of the CIB loan must be made within 90 days of occupancy by an industrial firm, 10 M.R.S.A. § 676.

Were the Authority permitted to issue a guarantee on a CIB project, the effect would be to extend the repayment of the CIB loan beyond the statutory maximum period of 90 days of occupancy by an industrial firm. Indeed, it would reduce the 90 day provision to a nullity. Therefore, we conclude that the legislature did not intend to permit MIBA mortgage insurance on CIB projects.

b. While the statute does not specifically authorize the Authority to review and approve a municipal revenue bond issue relating to a shell building, the construction of which was financed under the CIB program, such review and approval would not necessarily present a conflict of interest. In reviewing the municipal securities revenue bond issue the Authority is required to make the findings enumerated in 30 M.R.S.A. § 5328 referred to above. This function does not involve any financial commitment.

The Authority's responsibility under the CIB program (after a loan has been made) is to secure repayment. Where a CIB loan has been repaid before the revenue bond proposal has been submitted for review, there would be no possible conflict. Nor, as a legal matter, do we perceive any irreconcilable conflict if the revenue bond issue is designed to provide the funds to repay the CIB loan, since the criteria for CIB aspects of the transaction are different from those for the MSAB aspects.

Notwithstanding the foregoing, bond counsel may find it preferable, as a matter of practice, that the MGA refrain from putting itself in the position where it is called upon to make the kind of bifurcated decisions referred to above. If the practice could have an adverse effect upon the saleability of the bonds, or upon bond counsel's opinion concerning the bond issue, the MGA should undoubtedly not consider such proposals.

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Finally, our opinion is designed to provide general guidance only. Should specific proposals be made which call upon the Authority to act in more than one capacity (i.e., as MIBA and MSAB), we would urge the Authority to proceed only upon the specific advice of counsel.

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