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Courtiers General
Housing
30 M.R.S.A. 255

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April 21, 1976

Penobscot County Commissioners
County Court House
97 Hammond Street
Bangor, Maine 04401

Re: Public Housing Agency for Central Maine Indian Association

Gentlemen:

This letter responds to your request of March 9, 1976, for our opinion concerning the authority of Penobscot County in the field of public housing. It is our understanding that your questions arise from the desire of the Central Maine Indian Association (CMIA) to become actively involved in the "Housing Assistance Payments Program for Existing Housing" which is administered by the Department of Housing and Urban Development (HUD). Participation in this program on a local level is limited to "public housing agencies" (PHA), which is defined in 24 C.F.R. § 882.102 as:

"Any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of housing for low-income families."

The final determination as to whether a particular body qualifies for participation in any given federal program, must be made by the federal authorities administering that program. In addition, legal representation and assistance for the county commissioners is provided by the District Attorney in whose jurisdiction the county is located. 30 M.R.S.A. § 501. For these reasons, the general policy of this office would be to respectfully decline to render an opinion on questions such as those which you have asked. However, in light of the fact that you have stated that HUD has specifically requested such opinion, we will provide answers to your questions as follows.

1. Does Penobscot County have the authority under the laws of the State of Maine to become a PHA?

The answer to the first question depends upon whether the county has been "authorized to engage in or assist in the development or operation of housing for low-income Families." The answer is negative. It has been recognized that Maine counties may exercise a broad range of functions in accordance with legislative authorization. One expression of the legislative intent that counties have rather broad functions is found in 30 M.R.S.A. §255, where the counties were authorized to accept and expend federal funds for any purpose for which federal grants may be available. Opinion of the Attorney General, August 1, 1975. However, this statutory authorization to accept and expend federal grants carries with it the caveat that it is not intended to "... increase, expand or broaden the powers of the counties. ...". 30 M.R.S.A. § 255,3. It has also been decided that counties are creatures of the State and the powers and duties of the county commissioners are derived entirely from the statutes. State v. Vallee, 136 Me. 432, 446 (1940). Since there is no statutory authority for activities by the county in the area of low-income housing, it must be concluded that such authority does not exist.

Further support for this conclusion is found in the action which the Legislature has taken in the area of public housing. The Legislature has provided Maine Indian Housing Authorities to function on the various reservations (22 M.R.S.A. § 4731, et seq.), municipal housing authorities in each municipality (30 M.R.S.A. § 4601), and the Maine State Housing Authority (30 M.R.S.A. § 4601-A). The result is a comprehensive public housing program covering all areas of the State. The counties are not included in this program, and, therefore, it is clear that the Legislature has preempted any direct authority which the counties arguably might have had in this field.

It is our opinion, for the reasons stated above, that Penobscot County does not have authority under the laws of the State of Maine to engage in the field of public housing on a primary basis. It should be noted that a county might be able to join with a municipality in an agreement for interlocal cooperation under 30 M.R.S.A. § 1951, et seq. and thereby jointly exercise with the municipality its powers in the area of public housing. However, we do not know of any existing agreement of this specific type or how such agreement would work in practice. Nor do we know whether the possibility

of indirect, secondary action by the county in the area of public housing using this mechanism would qualify as authorization to "assist" in this area, as required by 24 C.F.R. § 882.102, under HUD's administrative guidelines. This latter question can only be answered by the appropriate HUD officials.

2. May CMIA be named as an agent for Penobscot County in establishing a PHA?

In light of the answer to your first question, your second questions become moot. The county may not do through its agents what it is not authorized to do itself.

Sincerely,

Joseph E. Brennan
JOSEPH E. BRENNAN
Attorney General

JEB:jg

cc: Ms. Donna Loring, Assistant Housing Coordinator
Central Maine Indian Association
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