

# MAINE STATE LEGISLATURE

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June 14, 1977

The Honorable Luman P. Mahany  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Representative Mahany:

You have asked several questions regarding L. D. 1782, "AN ACT Relating to the Powers of the Maine Seed Potato Board." We list them below along with our responses.

1. Is the real estate and equipment referred to in the bill and purchased and administered by the Seed Potato Board under the authority provided the Seed Potato Board under 7 MRSA §2154 owned by the Seed Potato Board or the State?

To the extent that real estate and equipment are acquired by the Board, title to it must be held in the name of the State, since the statute creating the Board, 7 M.R.S.A. §§2251 et seq., does not provide the Board with a separate corporate existence from that of the State. See, e. g. the status of a Housing Authority (including the State Housing Authority) set forth at 30 M.R.S.A. §4651.

2. Would L. D. 1782, if enacted into law, give the Seed Potato Board the authority to sell this real estate and equipment?

The specific language of the amendment would allow the Board to ". . . encumber, mortgage, pledge, lease, exchange or otherwise dispose of all or any part of such property. . . ." It is our opinion that the words "otherwise dispose of" would be broad enough to act as authorization for the Board to sell this real estate and equipment.

We note that 7 M.R.S.A. §2154, which would be amended by L. D. 1782, already contains authority for the Board to ". . .sell or otherwise convey real estate and farm equipment no longer required for purposes of this chapter." To the extent that the words "no longer required for the purposes of this chapter" might have been construed as a limitation on the Board's powers in this regard, such limitation is not included in the authority granted under L. D. 1782.

3. Can the Seed Potato Board constitutionally or legally be granted the authority enumerated in L. D. 1782?

As indicated in question 1, the Seed Potato Board does not enjoy a status independent of the State. More particularly, its enabling legislation does not prohibit it from pledging the credit of the State, a prohibition which may be found in other state legislation. See, e. g. , 30 M.R.S.A. §4601-A(1)(L). Consequently, the authority which L. D. 1782 would grant to it to do such things as "borrow money on such terms and conditions as it may determine," would have to be considered an authorization to create a "debt or debts, liability or liabilities, on behalf of the State," within the meaning of Article IX, §14 of the Maine Constitution. Thus, to the extent that the State indebtedness is currently at the constitutional limit of two million dollars, such an authorization would be unconstitutional. Maine State Housing Authority v. Depositors Trusts Co., 278 A. 2d 699, 706-07 (Me. 1971); Opinion of the Justices, 146 Me. 183 (1951).

4. If the real estate and equipment in question is owned by the State, may the Seed Potato Board constitutionally or legally be granted the authority to use such property as collateral to obtain money, or sell such property to obtain money for the purpose of repaying a loan owed to the State?

It is difficult to answer this question because of the apparently unique circumstances which exist with regard to the Seed Potato Board. As pointed out in answer to question No. 1, the Board does not have a separate corporate existence from that of the State and any purported "loan" by the state to the Board would be in effect a loan by the State to itself. Under these circumstances, there might be some question as to whether this would be in fact a "loan" or instead a paper transfer of funds from one account to another within the State government. However, it appears that because of the Seed Potato Board's unique operations, which are similar to a commercial venture, such "loan" has been recognized. Therefore, the actions of the Board contemplated in the question amount to selling of State property or using it as collateral to obtain funds in order to repay the State.

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Notwithstanding the unique situation just described, it is our opinion that L. D. 1782 would give the Board the authority to use the property as collateral or sell the property and use the revenues obtained in this manner to retire the "loan" owed to the State. However, since the ultimate security for any loan obtained by the Board is the credit of the State (because of the absence of any provision in its enabling legislation to the contrary - see question 3, supra), the question of whether the property is owned by the State or by the Board would have no effect upon the fact that the loan so acquired must be counted as a pledge of the State's credit.

5. Are there other boards such as the Seed Potato Board which are vested with authority similar to that provided in L. D. 1782?

Since this question does not involve a constitutional issue, nor an interpretation of a statute, but rather involves a substantial search of the Maine Revised Statutes, we would respectfully decline to answer as a prompt response to this opinion request is sought. In view of the constitutional problems with the proposed statute outlined above, however, we would think it unlikely that any state instrumentality would have the authority to take out loans against which the credit of the State is pledged, unless such loans are in the form of bonds authorized by the electorate pursuant to Article IX, §14 of the Maine Constitution.

I hope these answers are of some assistance to you.

Sincerely,



CABANNE HOWARD  
Assistant Attorney General  
Chief, Natural Resources Section

CH/bls

cc: The Honorable Donald F. Collins