

MAINE STATE LEGISLATURE

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Re: [unclear] [unclear] [unclear]

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

October 13, 1977

To: Gary R. King, Field Examiner III
Maine State Retirement System

From: Kay R. H. Evans, Assistant Attorney General

Re: Dover-Foxcroft Housing Development Corporation

By memo of August 18, 1977, you requested an opinion on the qualifications of the Dover-Foxcroft Housing Development Corporation as a "political subdivision" under Title 5, M.R.S.A., c. 103. As you know, the Corporation must fall within the terms of §1222(6) to so qualify. That subsection reads:

The term "Political subdivision" includes an instrumentality of the State of Maine, of one or more of its political subdivisions, the University of Maine, academies, water, sewer and school districts and associations of municipalities, or an instrumentality of the State and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the State or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the State or subdivision.


The Corporation would qualify if it were an "instrumentality" of the state and/or one or more of its political subdivisions, which was sufficiently independent therefrom to constitute a "juristic entity" directly employing those persons for whom it sought Social Security coverage by agreement with the Maine State Retirement System.

The documentation provided includes no evidence that the

Corporation is an instrumentality of the State^{1/} or of any of its political subdivisions^{2/} Its incorporation under Title 13, c. 81 is insufficient, by itself, to constitute the corporation an instrumentality of the State; this statute merely gives permission to organize in a particular form and lays down certain requisites for such organization and function. The Corporation's Certificate of Organization references Federal law, 42 U.S.C. § 1485, and the provisions of that law appear to establish a direct relationship, or the potential for one, between the Corporation and the Federal Government.

Since the facts provided do not establish the Corporation as an appropriate instrumentality, I do not reach the question of whether it is a "juristic entity."

On the basis of the material provided, the Dover-Foxcroft Housing Development Corporation does not qualify as a political subdivision for the purposes of Title 5, c. 103.



KAY R. H. EVANS
Assistant Attorney General

KRHE:jg

1/ Maine law makes provision for local housing authorities, 30 M.R.S.A. § 4551 et seq., but nothing in the material provided indicates a connection between the Corporation and this statute.

2/ The Corporation's Certificate of Incorporation indicates that corporate assets on dissolution would be paid over to the Town of Dover-Foxcroft. This is the only mention of a political subdivision and is of course not sufficient to constitute the corporation an instrumentality thereof.