

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

Otisfield Bond Obligations
Bonds: Effect of Change in Jurisdiction Boundary

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

January 26, 1978

Honorable Gail H. Tarr
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Tarr:

We are responding to your request for an opinion of this office concerning the constitutionality of L.D. 2003, "AN ACT to Allow the Town of Otisfield to meet its obligations to Cumberland County for Existing Bonded Indebtedness Through a Lump Sum Payment." More specifically, you ask whether this legislation would unconstitutionally impair the contractual obligations of Cumberland County to bondholders under Article I, Section 11, of the Constitution of Maine and Article I, Section 10, First Clause, of the Constitution of the United States. Our answer to this question is negative for the reasons stated below.

Your question arises from the removal of the Town of Otisfield from Cumberland County and its annexation to Oxford County, which was authorized by P. & S.L. 1977, c. 10 and ratified by the voters of Otisfield and Oxford County at subsequent referendum. Section 2 of this law concerns Otisfield's obligations to Cumberland County and specifies that the town's portion of existing bonded indebtedness shall be determined in a just and equitable manner by the County Commissioners and town selectmen. It is our understanding that the only significant indebtedness which requires resolution consists of bonds issued for construction of the Cumberland County Civil Center. These bonds were issued upon the full faith and credit of the County. P. & S.L. 1971, c. 86, section 7. Generally speaking, the security to holders of such bonds consists of the taxing powers of the County and the property in the County upon which taxes may be levied. Therefore, the question is

whether removal of the property in Otisfield from the tax base of Cumberland County decreases the security of the bondholders and thereby unconstitutionally impairs their contractual relationship with the County. An extension of this question is whether a lump sum payment as contemplated by L.D. 2003 would correct this situation if, in fact, it were determined to be unconstitutional.

It is settled law that a state has the authority to incorporate and set the boundaries of public corporations such as municipalities and counties, and to change the territorial boundaries of such corporations at its discretion. See generally: Laramie County v. Albany County, 92 U.S. 307 (1875); and Bowdoinham v. Richmond, 6 Me. 93 (1829). However, the question of what happens to existing obligations and indebtedness when boundaries are changed has been the subject of continued litigation. These questions began in Maine even before statehood was obtained. Windham v. Portland, 4 Mass. 384 (1808). In the case just cited, the Supreme Judicial Court of Massachusetts, sitting in the territory of Maine at Portland, held that if part of a town is annexed to another, the former town remains subject to all of the obligations and duties previously existing unless some new provision is made by the act authorizing the separation and annexation. This decision was cited with approval in North Yarmouth v. Skillings, 45 Me. 133 (1858). See also: Mount Pleasant v. Beckwith, 100 U.S. 514 (1879).

Our research has found only one case decided in Maine in which the question of impairment of a contract stemming from a boundary change has been specifically addressed. In Bowdoinham v. Richmond, supra, the Court held that a legislative act subsequent to the separation of Richmond from Bowdoinham, which relieved the new town of Richmond from all previous obligations for the support of paupers, was an unconstitutional impairment of what the Court found to be an existing contract between the two communities. This contract was based on the earlier separation legislation. Unfortunately, this case does not give guidance when the question concerns private, non-statutory contractual obligations between bondholders and the existing public corporation, such as those in the present situation.

Although Maine courts have not specifically addressed the question under consideration, there is abundant precedent in other jurisdictions. The general rule which may be gleaned from these cases is that action by a state reducing the territory within its political subdivisions, such as counties or municipalities, does not necessarily impair the contractual obligations to bondholders of that subdivision in an unconstitutional manner.^{1/} The most

^{1/} Only one jurisdiction, Florida, has indicated a position contrary to the general rule. See Humphreys v. State, 145 S. 858 (Fla. 1933).

commonly stated reason for this general rule is that no impairment exists in the absence of a showing that the political subdivision will be unable or any less able than previously to meet its obligations. See generally: Annotation, "Detaching Land from Municipalities" at 117 A.L.R. 267, 288, and cases cited therein.

It has been held that where the Legislature has restricted the municipal taxing power to the extent that it has practically annulled the contract under which the bonds were issued, such restriction is an unconstitutional impairment of the contract. Von Hoffman v. City of Quincy, 71 U.S. 535 (1866). However, simply decreasing the tax base of the political subdivision will not cause the same result unless it is shown that the statute has a tendency to destroy or materially reduce the taxing power.^{2/} An example of the type of dismemberment of a political subdivision which would cause unconstitutional impairment of bondholders' contracts is found in Bacon v. Road Improvement Dist. No. 1, 248 S.W. 267 (Ark. 1923), where the Legislature had excluded from the District approximately one-half of its original territory.

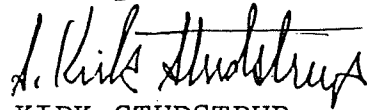
It is our understanding that the property value of Otisfield represents a relatively insignificant portion of the total tax base of Cumberland County as a whole. Therefore, in light of the general rule of law set forth above, it is our opinion that the separation of the Town from the County does not present a substantial or material threat to the contractual obligation of the

2/ Cases in which the courts have required a showing of substantial impairment include: Chicago Title and Trust Co. v. Hagler Special School District, 12 S.W.2d 881 (Ark. 1928) Dortch v. Lugar, 266 N.E.2d 25 (Ind. 1971) El Dorado Independent School Dist. v. Tisdale, 3 S.W.2d 420 (Tex. 1928) Geweke v. Village of Niles, 14 N.E.2d 482 (Ill. 1938) Sitte v. Paulson, 216 N.W.344 (N.D. 1927) Tisdale v. El Dorado Independent School Dist., 287 S.W. 147 (Tex. 1926) Town of Oneida v. Pearson Hardwood Flooring Co., 88 S.W.2d 998 (Tenn. 1935)

County to the Civic Center bondholders. There appears to be no threat that the County could not raise sufficient taxes from its remaining tax base for this purpose. Consequently, removal of Otisfield from Cumberland County would not unconstitutionally impair these contractual obligations even if no legislative remedy were provided for some contribution from the Town to payment of these obligations. The lump sum payment contemplated by L.D. 2003 would not cause any greater impairment of these obligations and, therefore, would not create problems under either of the constitutional provisions in question.

Please continue to call on us whenever you feel we may be of assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "S. Kirk Studstrup". The signature is written in a cursive style with a horizontal line across the middle.

S. KIRK STUDSTRUP
Assistant Attorney General

SKS/ec

cc: Committee on Local and County Government