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*Cumberland County Recreation Center
Legislative Department
August 9, 1978*

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DEPARTMENT OF THE ATTORNEY GENERAL
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March 3, 1978

Honorable Peter J. Curran
House of Representatives
State House
Augusta, Maine

Dear Representative Curran:

We are responding to your request of February 9, 1978, for an opinion of this office on questions concerning the Cumberland County Recreation District (Civic Center). We will set forth these questions and answer them separately below. However, before turning to the questions themselves, it would be helpful to review the statutory authorization for the Cumberland County Recreation District.

The Cumberland County Recreation Center (District) was created by P. & S.L. 1971, Chapter 86. Section 1 of that legislation states that the District is ". . . a body politic and corporate" Section 3 of the enactment specifies: "All the affairs of the District shall be managed by a board of 9 trustees, residents of the district, who shall be appointed by the Cumberland County Board of Commissioners and shall hold office as hereinafter provided and until their respective successors are appointed and qualified." Section 5 of the enactment, concerning the taxation authority of the District, reads as follows:

"Sec. 5. Assessment of taxes authorized to meet indebtedness; how collected; procedure.

"The trustees of the Cumberland County Recreation Center, after making due allowance for anticipated revenue, shall determine what sum is required each year to meet the interest on the bonds, notes or other obligations of the district, what sum is required each year to meet the bonds, notes or other obligations falling due and maturing that year and what sum is required to meet other necessary expenses of the district, and shall before

the first day of the December immediately preceding the next biennium, issue their warrant in the same form as the warrant of the Treasurer of State for taxes, with proper changes, to the assessor the total sum so determined upon the taxable polls and estates within Cumberland County, in the manner normally used by said County of Cumberland and commit their assessment to the officer charged by law with the duty of collecting taxes of said County of Cumberland who shall have all such authority and powers to collect said taxes as are vested by law to collect state, county and municipal taxes."

The entire enactment was approved by the voters of Cumberland County at referendum.

In light of the foregoing, your questions and our answers are as follows:

1. "Is it proper for the Legislature to delegate taxing powers to the Cumberland County Recreation District (Civic Center) in view of the fact that the persons exercising these powers are not elected officials?"

The taxing power mentioned in your first question is that which is set forth in § 5 set forth above. Essentially, the trustees are authorized to levy a tax upon the property in Cumberland County, and have that tax collected in the same manner as the taxes of other political subdivisions. Your question is whether it is constitutionally permissible for the Legislature to make such delegation in light of the fact that the trustees of the district are not elected officials. Generally speaking, the Constitution of Maine forbids imposition of any tax without the consent of the people or their legislators (Article I, Section 22), and forbids the Legislature from suspending or surrendering the power of taxation (Article IX, Section 9). However, these constitutional prohibitions do not prevent the Legislature from delegating its taxing authority to municipal corporations or to other special districts. See City of Auburn v. Paul, 110 Me. 192 (1912) and Hamilton v. Portland Pier Site District, 120 Me. 15 (1921). Since there is no constitutional requirement that such delegation be made only to bodies which have elected officials, it is our opinion that the legislative delegation to the Cumberland County Recreation District is not impermissible on this basis.

2. "Can the Civil Center Trustees establish the amount of money to be assessed on the citizens for the support of the Center without a Public Hearing?"

Section 5 of P. & S.L. 1971, Chapter 86, set forth above, does not require the Trustees to conduct a public hearing before determining the amount of assessment on the District. Nor does the Constitution require the Legislature to make provision for such hearing in delegating its taxing power. Therefore, in the absence of such statutory provision, no public hearing would be required as a matter of law, though there is also no provision which would prevent the Trustees from conducting such hearing if they wished.

3. "Can the Civic Center Trustees be prohibited from repaying principal except from funds constituting a profit from the operation of the Center?"

The provisions of § 5 of the enacting statute direct the Trustees to make "due allowance for anticipated revenue" in establishing the amount which will be assessed upon the taxpayers of the county to meet District obligations, including retirement of outstanding bonds. However, this provision deals with revenues rather than profits and does not limit repayment of principal to funds in the latter category. Furthermore, the bonds which have been issued are general obligations based upon the full faith and credit of Cumberland County and any attempt to limit repayment of these obligations to profits of the Civic Center might unconstitutionally impair the contractual rights of the bondholders insofar as the profits might not be sufficient to meet repayment of the obligations when due.

4. "Can the Cumberland County Legislative Delegation make any changes in the Civic Center Budget presented to us?"

As section 5 of the enabling legislation for the district is drafted, there is no requirement that the Trustees submit their budget to any governmental body for approval. In other words, at the present time the Legislature has not retained for itself or for other bodies, such as the county commissioners, the authority to review, modify, or approve the District budget drafted by the Trustees. This situation could be altered by proper enactment of the Legislature without the constitutional difficulties present in the answer to the preceding question.

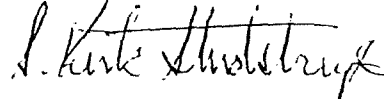
5. "Under present law, is the county of Cumberland required to act as a tax collector for the Trustees?"

Section 5 of the enabling legislation directs the Trustees to issue their warrant for the necessary taxes to "the assessor" and ". . . commit their assessment to the officer charged by law with the duty of collecting taxes of said County of Cumberland who shall have all such authority and powers to collect said taxes as are vested by law to collect state, county and municipal taxes." Since there is no statutory position of county assessor or county tax collector, we interpret these provisions to mean that the trustees would send their warrant and assessment to the assessor and collector in each municipality within the District, i.e., within Cumberland County. See: 30 M.R.S.A. § 254. There

is no statutory requirement that the taxes levied by the District be committed and collected as part of or along with the County taxes, though this may prove to be a more efficient method of collection. It should be noted, however, that the Trustees are required to issue their warrant before December 1 in each even-numbered year (the year immediately preceding the next biennium), while apportionment of the county tax would take place prior to March 1 every year. 30 M.R.S.A. § 254. Therefore, the answer to your question is that the county officials are not required to act as tax collectors for the Trustees, under present law.

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

Sincerely,



S. KIRK STUDSTRUP
Assistant Attorney General

SKS/ec

cc: Honorable Anne Bachrach