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*Division of Public Improvements (B) Authority of State  
Courts: Bureau of Public Improvements Authority  
5 M.R.S.A. § 1742  
4 M.R.S.A. § 17*

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September 20, 1978

To: Richard LaCasce, Superintendent of Buildings, Bureau of  
Public Improvements

From: Donald G. Alexander, Deputy Attorney General

Re: Bureau of Public Improvements Authority Regarding State  
Court System

This responds to your request for an opinion as to whether the State Court System is subject to the Bureau of Public Improvements authority in the areas of its responsibility relating to listing of real estate, 5 M.R.S.A. § 1742(11), leasing or approval of leasing, 5 M.R.S.A. § 1742(19) and approval of purchase or contracting for utility services such as telephone, telegraph, electricity, water, sewage and gas services, 5 M.R.S.A. § 1742(20).

The authorizing legislation for the Bureau of Public Improvements, and particularly the definition of "public improvements" specified in 5 M.R.S.A. § 1741, indicates that the Legislature intended that the Bureau of Public Improvements have broad authority over State-owned real estate. Thus, the term "public improvements" extends to all buildings or public works owned, leased or hereafter constructed by "the State of Maine or any department, officer, commissioner or agency thereof. . . ."

The courts are a State responsibility. The State assumed significant financial and supervisory responsibility for Superior Court facilities as a result of implementation of P.L. 1975, c. 408. The District Courts and the Administrative Court have always been primarily a State responsibility.

The broad grant of authority in § 1741 would thus appear to extend to the court system. This is confirmed by the fact that there is no competing authorization within the court authorization statutes to perform the functions similar to those assigned the Bureau of Public Improvements. The State Court Administrator is given

authority to prescribe uniform administrative and business methods for the court, 4 M.R.S.A. § 17(5) and examine arrangements for use and maintenance of court facilities, 4 M.R.S.A. § 17(8). However, purchasing as opposed to examining authority is limited to "judicial equipment and supplies thereof." Thus it would appear that the Legislature intended that the Bureau of Public Improvements continue to maintain general authority over court buildings and building acquisition arrangements although with a consultive role for the State Court System acting through the State Court Administrator's authority to "examine the arrangements for the use and maintenance of court facilities." 4 M.R.S.A. § 17(8).

In reaching this conclusion, we find no problem with the separation of powers clause (Article III) of the Maine Constitution. Functions performed by the Bureau of Public Improvements are basically staff support functions for the court system. In this way, as a general matter, activities of the Bureau of Public Improvements in providing support for the court system in no way infringe upon the judicial powers of the court protected by Article III. This is not a case such as District Court for District IX v. Williams, 268 A.2d 812 (Me., 1970), where the Court viewed its essential capacities to control its personnel infringed by action of the Legislature in subjecting Court personnel to review and removal procedures of the State Employees Appeals Board within the executive department. Instead, the Bureau of Public Improvements' function here, just as the functions of the State Retirement System or the State Controller's Office, or other State agencies whose actions affect the court system, is more in the nature of ministerial and supporting activities for the Court's judicial functions.

While the above propositions are stated as a matter of generality, we recognize that it is possible, in specific instances, that actions of the Bureau of Public Improvements, or refusals to act, could directly infringe upon judicial functions. Such matters would have to be reviewed upon a case-by-case basis. We would think, however, that the circumstances of conflict would be rare.

The particular question which has given rise to this opinion is the matter of purchase of a telephone system for use by the State Court System in the Cumberland County Courthouse and other court facilities in the vicinity of the Cumberland County Courthouse. The court desires to acquire a telephone system after seeking competitive bids thereon.

It is our view that pursuant to 5 M.R.S.A. § 1742(20) the Bureau of Public Improvements does have some role in cooperation with the Court, over the acquisition of such telephone equipment. The Court having independent authority to purchase "equipment;"

4 M.R.S.A. § 17(8), the Bureau having authority to control acquisition of utilities, 5 M.R.S.A. § 1742(20). Where there has been competitive bidding, competitive bidding rules favor acceptance of the lowest bid for equal services except where rejection of the lowest bid can be justified on grounds relating to the quality of the services which are subject to the bid. Justification for rejection of the low bid must be particularly strong where the agency which is to receive the service also desires to accept the lowest bid. Further, in light of the Court's independent authority to purchase "equipment," the Bureau should give the Court's views particularly great weight in the question of selection of telephone equipment.

I hope this information is helpful.



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Deputy Attorney General

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