

MAINE STATE LEGISLATURE

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October 13, 1978

To: Leighton Cooney, State Treasurer
From: Kate Clark Flora, Assistant Attorney General
Subject: Funding of the Maine Veterans Home

This responds to the question posed by your September 26, 1978 letter concerning what you perceive to be a conflict in the legislation authorizing a bond issue in the amount of \$2,100,000 to establish a Maine Veterans Home between the stipulation that such bonds be self-liquidating, and the fact that no legislative appropriation has been provided to make interest and principal payments which will become due prior to the time that the home is constructed and operational and is producing revenues.

The Legislation involved in the funding of the veterans home, on first impression, appears ambiguous in its intention with regard to financing. The introductory section of P.L. 1977, Chapter 562, part 2, which contains the sections authorizing the bond issue, states as follows:

"Authorization of bond issue for construction of Maine Veterans Home. The cost of constructing the Maine Veterans Home, including any expenses incurred in financing thereof, shall be taken and appropriated from the proceeds of bonds issued under the authority of this act."

Sub-section 7 provides:

"This act shall not in any manner preclude the Board of Trustees or the Treasurer of State from accepting from any authorized agency of the Federal government or other non-state sources construction aid fund grants, debt service grant funds, or other grants for the planning, construction, equipping or property acquisition for any of the projects provided for in this act, or from entering into agreements with such agency or agencies respecting any such grants."

Sub-section 8 provides:

"The proceeds of all bonds issued under the authority of this act and the funds made available for interest and debt retirement thereunder shall at all times be kept distinct from all other monies of the State and shall not be drawn upon or be available for any other purpose."

The language of the section first quoted above, which states that the cost of construction including expenses incurred in the financing thereof, is to be taken from proceeds of the bonds issued under the authority of the act, would appear to authorize the use of the proceeds of bonds (or in this case bond anticipation notes) to pay interest if necessary, during the course of construction of the home. The language of sub-§ 8, however, refers quite specifically to two different sources of funding, one the proceeds of all bonds issued under the authority of the act, and the other "funds made available for interest and debt retirement thereunder". This section, and the language of § 7 which authorizes the trustees and the Treasurer to accept funds made available from the Federal government or other non-State sources including, as specifically enumerated, "debt service grant funds" suggests that the Legislature contemplated a separate source of funds, either legislatively provided, or acquired from some outside source, either Federal or otherwise, would be the fund which would provide for interest and debt retirement.

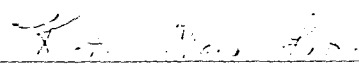
There is no legislative history available to assist in the interpretation of the meaning of these provisions. This ambiguity must be resolved by applying the rules of statutory construction.

It is clear from the fact that the Legislature enacted legislation authorizing the Maine Veterans Home, that the Legislature intended that the Maine Veterans Home be built. Legislative intent, if ascertainable, must prevail and be given effect. Finks v. Maine State Highway Comm'n, 328 A.2d 791 (Me. 1974). Construing the language of the enactment in such a way as to permit building of the Maine Veterans Home only if some outside organization or the Federal government provided funding to service the Legislatively-authorized bond issue, where that is not specifically spelled out, would defeat the Legislature's purpose. It is a fundamental presumption in statutory interpretation that the Legislature cannot be considered to perform vain acts. The legislation in question must therefore be interpreted in such a way as to enable the legislative purpose to be accomplished. The Legislature, when it enacted legislation authorizing a bond issue for construction of the Maine Veterans Home which was ultimately intended to be self-liquidating, must have known that there would be some period of time during which the Home was being constructed in which it would be producing no income. In the introductory paragraph of the authorization for the bond issue, the Legislature provided that the proceeds from the bond issue were to be used for the cost of constructing the Maine Veterans Home including any expenses incurred in

financing thereof. (Emphasis supplied). Expenses incurred in the financing of a project normally includes the interest which must be paid in order to obtain financing. It therefore can be concluded from the language which the Legislature has used that the Legislature intended to authorize the use of bond proceeds to pay interest on the bonds during the period of construction of the Maine Veterans Home. This interpretation is consistent with the language which the Legislature has chosen. The apparent ambiguity which arises from the language of sub-§ 8, discussed above, can be resolved by taking a commonsense view of the proposed project. It is likely that what the Legislature is referring to in sub-§ 8 when it refers to two funds are, one made up of the current proceeds from all bonds which are to be used for planning, construction and, as suggested by the introductory paragraph, debt service, and a separate one made up of funds which will be available for interest and debt retirement which funds will arise from payments made by occupants of the Home once it is finally constructed.

There is no authorization, however, for the use of bond proceeds to pay the principal which might become due during the construction period. I therefore conclude that what the Legislature has authorized is the issuance of some form of bond financing in the early years (the construction years) in which interest but not principal becomes due and that bond proceeds may be used to pay off debt interest.

I hope that this information has been helpful to you. If we can be of further assistance, please feel free to call on us.


KATE CLARK FLORA
Assistant Attorney General

KCF:jg

cc: Robert C. MacFarland, Chairman