

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)

RICHARD S. COHEN
ATTORNEY GENERAL



479-35
JOHN M. R. PATERSON
DEPUTY ATTORNEY GENERAL

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

March 1, 1979

Representative Walter L. Bunker
House of Representatives
Augusta, Maine 04333

Dear Representative Bunker:

Your request for an opinion dated February 12, 1979 has been referred to me for response. In your letter you ask whether a town has legal authority to contribute money to nonprofit organizations such as Action Opportunities, Inc., Counseling Center for the Homemaker Program, Maine Health Systems Agency, and Northeast Combat, Inc.

Unfortunately, we are unable to give you a specific answer regarding each of the named entities because we do not know the purpose for which the public funds will be used. In the expenditure of public funds, municipalities have only the authority expressly or impliedly delegated to them by the Legislature, either by statute or by charter as amended pursuant to the provisions on Home Rule, 30 M.R.S.A. § 1911 et seq. Squires v. Inhabitants of City of Augusta 153 A2d80,86 (Me. 1959). The purposes for which a municipality may raise or appropriate money are set forth in Title 30 M.R.S.A. Sections 5102 to 5108. I have attached copies of these sections for your convenience.

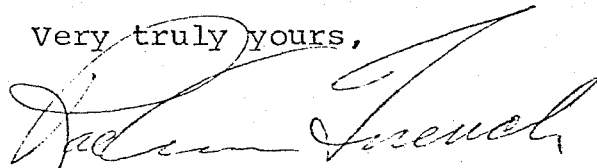
In applying these statutory provisions to the facts of a specific case, it must be remembered that a municipality may only use public money for a public purpose, not a private purpose, and that even the Legislature is itself limited in its power to authorize municipal expenditures for other than a public purpose. Opinion of the Justices 131A2d904 (Me., 1957). To determine whether the purpose for which town money is to be

Representative Walter L. Bunker
March 2, 1979
Page 2

used is a public one, the following principals should be applied. The purpose must be for the benefit of the general public, not individuals, so that everyone, if the need arises, has the right to use or take advantage of the benefit. In addition, the benefit cannot be remote but must directly benefit the public generally. Paine v. Savage, 136 A 664, 666 (Me., 1927).

Because I am unfamiliar with the functions of most of the nonprofit organizations named in your letter and do not know how each entity intends to use the town's contributions, I cannot determine whether the attached legislation either expressly or impliedly authorizes the town involved to donate public money to these nonprofit organizations and whether the organizations intend to use the contribution for a public purpose. Consequently, I cannot answer your questions regarding each entity. The Department of the Attorney General has issued opinions previously on municipal contributions to nonprofit organizations such as Northeast Combat, Inc. which may be helpful to you. I am enclosing copies of our opinions dated March 2, 1977 and November 14, 1977 for your information.

Very truly yours,



RAE ANN FRENCH
Assistant Attorney General
Consumer and Antitrust Division

RAF/sjn

Enc.

Municipalities Spending Authority

30 M.R.S.A. § 5101

MacLean I Art 9 Pt Second § 1

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

March 2, 1977

Honorable Philip C. Jackson
Senate Chambers
State House
Augusta, Maine

Dear Senator Jackson:

This letter responds to your request for an opinion of our office on two questions concerning municipal fiscal matters. The questions and our answers are stated individually below.

Your first question is:

"May municipalities raise or appropriate money to contribute to a nonprofit corporation that provides consumer action services, including processing, investigating and redressing consumer complaints and educating consumers in business practices?"

The answer to your question is generally negative with a qualification. However, it must be emphasized that our conclusion is a matter of statutory interpretation and should not be interpreted to preclude adoption of legislation to permit such expenditures. It has been decided by the Supreme Judicial Court that a municipality is a body politic and has only that authority to act which is given to it by the Legislature, as evidenced by its charter or by statute. Squires, et al. v. City of Augusta, 155 Me. 151, 160 (1959). This principle extends to appropriation of municipal funds, as was the case in the Squires decision. Statutory authority for municipal fund-raising and appropriation is found in 30 M.R.S.A. § 5101 which states:

"A municipality may raise or appropriate money for the purposes specified in sections 5102 to 5108."

Honorable Philip C. Jackson

Page 2

March 2, 1977

We have reviewed these latter sections and find no authorization for the type of expenditures stated in your question, though these provisions do cover a broad range of permissible expenditure items. Therefore, the answer to your question is negative as a matter of statutory authority.

The Squires decision states that the other source of authority for municipal expenditures may be the municipal charters. Charter provisions differ from municipality to municipality and, therefore, it is possible that the expenditures which your question contemplates may be permissible for an individual municipality. Of course, this would be a separate question for each municipality. It should be noted that under the municipal home rule provision of the Constitution of Maine (Article VIII, Part Second, Section 1) municipalities have the power to amend their charters in the manner set forth in 30 M.R.S.A. §§ 1912, et seq., without legislative approval. It should also be noted that any individual expenditure by a municipality is subject to the general rule that it must be for a public purpose. Cf. Art. I, § 21, Constitution of Maine.

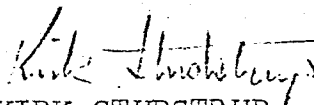
Your second question is:

"If a municipality may raise or appropriate money for this purpose, may it also restrict or limit the use or expenditure of the contributions by the corporation receiving them?"

Assuming that a given municipality has the charter authority to make the appropriations contemplated by your question, and that such expenditures are for a municipal purpose, it is our opinion that a municipality may place limitations or restrictions upon the use of such funds. Grants of this sort are essentially the same as any grant by a governmental body and often are made subject to contractual limitations, conditions and assurances.

Please continue to call on us whenever we may assist you.

Sincerely,



S. KIRK STUDSTRUP
Assistant Attorney General

SKS:mfe

Municipalities Expenditures For Private Groups

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

November 14, 1977

Honorable Richard Davies
53 North Maine Street
Orono, Maine 04473

Dear Representative Davies:

This responds to your request seeking clarification of our opinion of March 2, 1977, regarding capacity of municipalities to undertake expenditures for nonprofit corporations that provide consumer action services.

In addition to the opinion of March 2, we have also had the opportunity to address the question of municipal authorization for expenditures in an opinion dated September 12 (copy enclosed), relating to expenditures for advocacy in state referendum campaigns.

Based on our analysis in these opinions, we believe the following general principles would apply to municipal expenditures relating to consumer groups:

1. There is no provision of state law which generally prohibits expenditure of municipal funds for support of activities of certain private groups, including consumer action services.
2. As indicated in the opinion of March 2, 1977, there is no provision of state law which generally authorizes such expenditures.
3. As such expenditures are neither specifically prohibited nor specifically authorized by state law, the legality of such expenditures would depend on whether there was authorization for such expenditures in local charter or ordinance provisions. Without such authorization, the expenditure would be improper.

Hon. Richard Davies

Page 2

November 14, 1977

4. The constitutional requirement that public expenditures must be for a public purpose would apply to any municipal expenditures.

While the above provisions apply as a matter of general interpretation, any specific expenditure by a municipality could be subject to problems depending upon the manner in which the expenditure was authorized and the uses to which the public funds given to the private group were put. For that reason, any particular expenditure proposal would have to be examined by counsel for the municipality to determine if the expenditure was properly authorized under local law, if the expenditure would be for a public purpose, and if contemplated uses of the funds would not be in violation of any state law. Because of the uniqueness of each municipal situation, this office is in no position to advise on whether any particular expenditure or use of funds contemplated by any particular municipality would be consistent with the requirements of state law.

Sincerely,

DONALD G. ALEXANDER
Deputy Attorney General

DGA/ec
Enclosure