

MAINE STATE LEGISLATURE

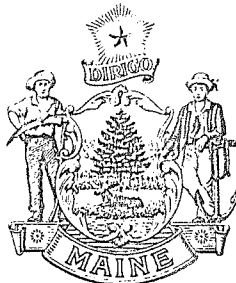
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May 3, 1979

Honorable Harry L. Vose
House of Representatives
State House
Augusta, Maine 04333

Re: Eastport Port Authority

Dear Representative Vose:

This letter responds to your question of whether the City of Eastport is liable for bonds issued by the Eastport Port Authority (the "Authority"). We have concluded for the reasons set forth below that the Authority, as a quasi-municipal corporation, is vested with an independent borrowing power, the exercise of which does not result in any liability on the part of the City of Eastport. However, by reason of the same status, the property of the inhabitants within the territorial boundaries of the Authority may be levied upon to satisfy a judgment of the bondholders of the Authority.

DISCUSSION

The Authority was established by Chapter 14 of the Private and Special Laws of 1977. Section 3 thereof empowers the Authority to issue bonds or notes and further provides that:

The bonds and notes shall be legal obligations of the authority which is hereby declared to be a quasi-municipal corporation within the meaning of the Revised Statutes, Title 30, section 5053, and all the provisions of the section shall be applicable thereto.

This provision, or its equivalent, appears in most legislation creating quasi-municipal corporations. The statutory reference in the quoted provision, 30 M.R.S.A. §5053, provides that:

The personal property of the residents and the real estate within the boundaries of a municipality, village corporation or other quasi-municipal corporation may be taken to pay any debt due from the body corporate. The owner of property so taken may recover from the . . . quasi-municipal corporation under Title 14,

section 4953."^{1/}

This last cited statute, 14 M.R.S.A. §4953, in turn provides that:

The owner of any real or personal estate so sold may recover against the town, in a civil action, the full value thereof with interest at the rate of 12% yearly

As explicitly stated in its enabling legislation quoted first above, the Authority is a "quasi-municipal corporation." This status has a dual significance for purpose of the present analysis.

First of all, quasi-municipal corporations, by their very nature, are independent political entities separate and distinct from any city, town or other political subdivision in which they may operate. See, e.g., Augusta v. Augusta Water District, 101 Me. 148, 1950-51, 63 A. 663, 664 (1906):

Such subdivisions are merely the instrumentalities or agencies appointed by the State to fulfill some part of its own functions, within a limited territory.
* * * These territorial subdivisions may be conterminous with city or town limits, or they may embrace more or less than the territory of a city or town. The character of a subdivision depends, not upon the limits of its territory, but upon the

^{1/} We have elided the reference in §5053 to recovery against a municipality because we have concluded, for the reasons explained below, that a municipality is not liable for the debts of a quasi-municipal corporation and we do not interpret §5053 as creating any such liability. Thus, in our opinion, the provisions of §5053 for recovery against a municipality are limited to circumstances where the municipality extends its own credit (i.e., where the municipality issues bonds) and the property of its inhabitants is taken to satisfy the municipality's debt.

nature of its public duties^{2/}

It follows from their independent status that when quasi-municipal corporations are given the power to borrow, they may exercise that power without incurring any liability on the part of any city, town or other political subdivision. Thus, in Kennebec Water District v. City of Waterville, 96 Me. 234, 254-55, 52 A. 774, 782-83 (1902) the Maine Supreme Court, addressing this precise question, pointed out that:

The Kennebec Water District is a quasi-municipal corporation. It is declared to be such by §10 of its enabling act. The powers, the rights and the property of the new corporation rest exclusively in it, and in no degree in the City of Waterville.

and then ruled that:

The charter of the Water District confers no authority on the part of that corporation to create or incur indebtedness against the city, nor does it provide that the city shall be liable for any debts or liabilities incurred by the Water District.

^{2/} Also see, Kelley v. Brunswick School District, 134 Me. 414, 187 A. 703 (1936); Baxter v. Waterville Sewerage District, 146 Me. 211, 216, 79 A.2d 585, 588 (1951) ("the Legislature may create distinct and separate bodies politic and corporate with identical inhabitants and territory."); Carlisle v. Bangor Recreation Center, 150 Me. 33, 36, 103 A.2d 339, 341 (1954) ("The two corporations, the City of Bangor and the Bangor Recreation Center, are separate and distinct. The Bangor Recreation Center is not made a part or agency of the city because the territory of each is the same, or the machinery for assessment and collection of the taxes within the 'district' . . . is furnished by the city."); Opinion of the Justices, 253 A.2d 309, 335 (1969) ("Our Court has recognized a clear-cut distinction between municipalities and quasi-municipal corporations"). See, generally, 1 McQuillin, Municipal Corporations, §2.13 at 151.

This holding has been consistently followed by the Supreme Court of Maine.^{3/} The Act creating the Eastport Port Authority does not provide that the City of Eastport shall be liable for the debts of the Authority. Accordingly, it is clear that the City of Eastport is not liable for the bonds of the Authority.

Secondly, the status of the Authority as a quasi-municipal corporation "within the meaning of 30 M.R.S.A. §5053" means that, at least conceptually, the personal property of the inhabitants and the real estate situated within the territorial boundaries of the Authority^{4/} may be taken and sold to satisfy the debts of the Authority should the mortgages and other security agreements securing the bonds and other sources of revenue available to the Authority be insufficient to satisfy the bonded indebtedness. The statutory liability of the property of inhabitants of a political subdivision for satisfaction of its debts has a long tradition, unique to Maine and a few other New England states.^{5/} It is still regarded as an important source of credit (Canal National Bank v. SAD No. 3, supra,

^{3/} Augusta v. Augusta Water District, supra; Hamilton v. District, 120 Me. 15, 112 A. 836 (1921); Kelley v. Brunswick School District, supra; Baxter v. Waterville Sewerage District, supra; Car lisle v. Bangor Recreation Center, supra; Canal National Bank v. SAD No. 3, 160 Me. 309, 203 A.2d 734 (1964); and Opinion of the Justices, supra.

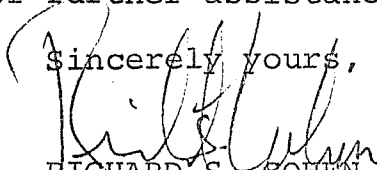
^{4/} It is not clear from §5053 whether municipal real estate situated within the territorial boundaries of a quasi-municipal corporation may be levied upon to satisfy the debts of a quasi-municipality. In view of the many cases holding that the quasi-municipal corporation's debts are not to be attributed to the city, it is not likely that the latter's property would be available to the bondholders of the former. In any event, municipal owned property devoted to government purposes is immune from levy on public policy grounds. Riley v. Harmony, 111 Me. 91, 88A. 161 (1913); 10 McQuillin, Municipal Corporations §28.57 at 199-202, 17 McQuillin, supra, §49.43 at 262-5.

^{5/} Adams v. Wiscasset Bank, 1 Me. 361, 364 (1821) and Eames v. Savage, 77 Me. 212, 216-218 (1885). See, generally, 2 Antieau, Municipal Corporation Law, §15.49 at 15-101; 17 McQuillin, Municipal Corporations, §49.48 at 277; Note, 18 B.U.L.Rev. 185, 187-88 (1938).

160 Me. at 322-23, 203 A.2d at 742), and provisions therefor are typically incorporated in the legislation creating a quasi-municipal corporation although we are not aware of any recent examples of the exercise by bondholders of their rights in this regard. The constitutionality of this practice has been upheld on the theory that "in the end" any individual whose property is levied upon "only pays his rateable share of the common debt." Eames v. Savage, supra, 77 Me. at 222.^{6/}

I trust this information will be helpful. Please do not hesitate to contact me if I can be of further assistance to you.

Sincerely yours,


RICHARD S. COHEN
Attorney General

RSC:jg

^{6/} The proportionate distribution of the quasi-municipal corporation's debt is accomplished by permitting the inhabitant who loses his property to obtain a judgment against the quasi-municipal corporation (see 14 M.R.S.A. §4953 quoted above), thereby acquiring the same right as the original bondholder to levy against the property of other inhabitants. See, Eames v. Savage, supra, 77 Me. at 222. The same result could be achieved by a property owner's exercise of the doctrine of "equitable contribution" from property of other inhabitants. See, Bragdon v. Worthley, 155 Me. 284, 153 A.2d 627 (1959); 18 C.J.S., Contribution, §1 at 2, et seq.; 18 Am.Jur. 2d, Contribution §1 at 6, et seq.