

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



79-102
STEPHEN L. DIAMOND
JOHN S. GLEASON
JOHN M. R. PATERSON
ROBERT J. STOLT
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

May 18, 1979

Honorable Judy Kany
House of Representatives
State House
Augusta, Maine 04333

Re: Legislative Documents 960 and 1137.

Dear Representative Kany:

You have asked us to review Legislative Documents 960 and 1137 in light of Maine State Housing Authority v. Depositors Trust Company, (Me., 1971) 278 A.2d 699 and to determine whether or not "housing for persons who are not low income is a public purpose?"

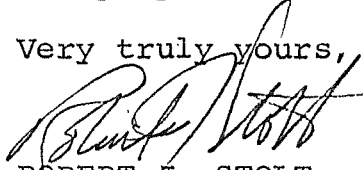
The courts have been very liberal in their interpretation of public purpose in the realm of public housing. Most agree that "public purpose" is a flexible concept which expands with the march of time to meet the needs of a complex society even though the need was unheard of when the state constitution was adopted." Opinion to the Governor (R.I., 1973) 309 A.2d 809; see Maine State Housing Authority v. Depositors Trust Company, supra, at 704. In pursuit of this liberally-stated concept, many state courts have accepted the goal of L.D. 1137 (low or moderate income residential housing) as a legitimate public purpose. See, for example, Utah Housing Finance Agency v. Smart, (1977) 561 P.2d 1052; California Housing Finance Agency v. Elliot, (1976) 131 Cal. R. 361; Opinion to the Governor, (R.I. 1973) 308 A.2d 809; State ex rel Warren v. Nusbaum, (Minn., 1973) 208 N.W.2d 780 and Minnesota Housing Finance Agency v. Hatfield, (1973) 210 N.W.2d 2 8.

The issue of public purpose in housing without regard to income has not been directly addressed in any state, but the Court of Appeals of California obliquely dealt with the question in Board of Supervisors v. Dolan, 119 Cal. R. 347 (1975), (result reasserted in California Housing Finance Agency v. Elliot, supra). In Dolan the California Court of Appeals

accepted as a public purpose the rehabilitation of residential housing without regard to income knowing that the rehabilitated housing would be purchased and rented by all income levels. However, the availability of rehabilitated housing to all income levels was not an issue in Dolan, because Dolan's purpose was clearance of blighted areas, a long recognized public purpose.

Despite the inclination of the courts to give great latitude and deference to the public purpose determinations of legislatures, especially in the area of housing, our ultimate conclusion is influenced by three contrary considerations. First, no court has specifically addressed the question of whether housing without regard to income levels is a public purpose; second, government involvement in a program which could conceivably involve rental housing for high income persons might well be viewed as a radical departure from prior programs upheld by the courts; third, in the view of at least one commentator,^{1/} the Maine Law Court has given a comparatively narrow interpretation to the concept of "public purpose." Thus, without a clearer declaration of a public purpose supported by some demonstrable need for legislative intervention into this area for all income levels, we have serious reservations whether the courts would find that L.D. 960 expresses a constitutional public purpose.^{2/}

Very truly yours,



ROBERT J. STOLT
Deputy Attorney General

RJS/ec

-
- 1/ The 1965 Maine Municipal Industrial and Recreational Obligations Act, 18 Maine Law Review 25 (1966).
- 2/ Apart from the novelty of the issue, a judicial resolution of the constitutionality of L.D. 960 would be desirable in light of the fact that questions about the legality of the bill might adversely affect the marketability of the bonds.