

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



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 30, 1979

Jerrold Speers
Treasurer of State of Maine
State Office Building
Augusta, Maine 04333

Dear Treasurer Speers:

You have asked whether, under the Housing Mortgage Insurance Law (30 M.R.S.A. § 4784, et seq.), the State Treasurer has unlimited discretion to refuse to issue state general obligation bonds upon a request for their issuance by the Maine State Housing Authority. In our view, the role of the Treasurer in the issuance of these bonds is essentially ministerial. Thus, any discretion he might have in declining to issue the bonds would be extremely limited.

The borrowing authority for the Indian Housing Mortgage Insurance Program is set out in the first sentence of 30 M.R.S.A. § 4788, which provides, in relevant part, as follows:

The Maine State Housing Authority is authorized to request the Treasurer of State to issue up to \$1,000,000 in state general obligation bonds for the purpose of providing funds to pay any necessary and proper costs or charges arising for any reason. . . . (emphasis added)

The statute clearly empowers the Authority to request the Treasurer to issue the bonds. The problem stems from the fact that the Act is completely silent on the options available to the Treasurer in dealing with such a request.

We recognize that the word "request" may well connote a power on the part of the recipient of the request to grant or deny that which is being sought.^{1/} Were the resolution of this question

^{1/} Webster's Third New International Dictionary defines request as follows: "to ask to do something" or "to ask for something."

to turn solely on the meaning of that term, a strong argument could be made that the Treasurer has unlimited, or at least broad, discretion to refuse issuance of the bonds. Other considerations persuade us, however, that the Legislature did not intend that result.

The most persuasive evidence that the Legislature intended the Treasurer's role to be largely ministerial lies in the declaration of purpose (30 M.R.S.A. § 4785) found in the Housing Mortgage Insurance Law. The last sentence of that declaration reads as follows:

It is the purpose of this Article to designate the State Housing Authority as the state agency responsible for implementing the powers provided by the Constitution in Article IX, section 14-D.

Article IX, § 14-D constitutionally authorizes the borrowing of money against the credit of the State for the purpose of insuring mortgage loans on Indian housing.^{2/} Accordingly, the Legislature has unequivocally vested in the Housing Authority the responsibility for the exercise of this borrowing power. To construe 30 M.R.S.A. § 4788 as permitting the Treasurer the absolute right to veto the issuance of bonds would undermine the power of the Housing Authority and would render the legislative declaration of purpose a nullity. Governed by the principle of statutory construction requiring that, if possible, effect be given to every part of an enactment, Camp Walden v. Johnson, 156 Me. 160, 165 (1960), we are unable to conclude that the Treasurer has an implied power which would destroy the express power of the Housing Authority.

The legislative history of the present version of § 4788 supports the view that it was not the legislative purpose to give the Treasurer unbridled power over the issuance of bonds. Initially, the section provided that "the Maine State Housing Authority is authorized to issue up to \$1,000,000 in state general obligation bonds. . . ." The Act was amended by P.L. 1977, c. 163 to provide that "the Maine State Housing Authority is authorized to request the Treasurer of State to issue up to \$1,000,000 in state general obligation bonds...." (emphasis added). The bill which added the underlined language,

2/ Art. IX, § 14-D provides in full as follows:

For the purpose of fostering and encouraging the acquisition, construction, repair and remodeling of houses owned or to be owned by members of the 2 tribes on the several Indian reservations, the Legislature by proper enactment may insure the payment of mortgage loans on such houses not exceeding in the aggregate \$1,000,000 in amount at any one time and may also appropriate moneys and authorize the issuance of bonds on behalf of the State at such times and in such amounts as it may determine to make payments insured as aforesaid.

L.D. 849^{3/} of the 108th Legislature, carried the following Statement of Fact:

This bill is intended to clarify the procedure for issuance of general obligation bonds for Indian Housing Mortgage Insurance.

Although the Statement of Fact may in retrospect appear unduly optimistic, it does reveal that the inclusion of the Treasurer in the statute governing the issuance of the bonds was intended only as procedural clarification. It would thus go far beyond the stated legislative intent to read the amendment to § 4788 as drastically altering the responsibility for the issuance of the bonds.

A review of the other programs created to implement art. IX, §§ 14-A through 14-E indicates that the above conclusion is consistent with the customary legislative approach in this area. In those programs, the power to determine whether money should be raised appears to lie primarily with the authority charged with the responsibility for administering the program. Title 37-A M.R.S.A. § 47, which applies to the Maine Veterans Small Business Loan Authority Board, typifies the procedure to be followed by these authorities:^{4/}

If from time to time in the opinion of the loan authority board the addition of moneys to the fund may be required to meet obligations, the loan authority board shall, in writing, request the Governor to provide moneys in such amounts as may be necessary for the purpose. The Governor shall transfer to this fund sufficient moneys for said purpose from the State Contingent Account or from the proceeds of bonds to be issued as provided in this section. If bonds are to be issued, the Governor shall order the Treasurer of State to issue bonds in the amount requested, but not exceeding in the aggregate at any one time outstanding the amount set forth in the Constitution of Maine, Article IX, Section 14-E,

^{3/} There was no debate in either House of the Maine Legislature on this bill. Accordingly, the Statement of Fact represents the only legislative history.

^{4/} Similar procedures are found in 5 M.R.S.A. § 15008 (implementing art. IX, § 14-A), 10 M.R.S.A. § 802 (implementing art. IX, §§ 14-A and 14-B) and 20 M.R.S.A. § 3508-A (implementing art. IX, § 14-C).

As with the Indian Housing Program, 37-A M.R.S.A. § 47 uses the term "request" to describe the communication from the loan authority board to the Governor. Once the request is made, however, the statutory language appears to require the Governor to provide the necessary money either from the State Contingent Account or the proceeds of a bond issue. While this procedure is not identical to that prescribed under the Housing Mortgage Insurance Law, it does reflect a legislative practice of vesting in the governing authority the primary responsibility for determining when it is necessary to raise money for purposes of effectuating the program.^{5/}

There is one final point which influences our conclusion. Article IX, § 14-D, authorizing the issuance of bonds on behalf of the State to insure the payment of mortgage loans on Indian housing, was adopted only after considerable legislative debate and ratification by the voters. Given this approval by both the electors and their representatives, we would be reluctant to construe 30 M.R.S.A. § 4788 as giving the State Treasurer an absolute veto over the issuance of the bonds absent a clear legislative intent to that effect.^{6/} We find no such clear intent in the Housing Mortgage Insurance Law.

The above conclusion should not be interpreted to mean that the State Treasurer may never refuse a request by the State Housing Authority to issue bonds under the Housing Mortgage Insurance Law. A cogent argument can be made that under certain circumstances, the Treasurer would have the inherent power,^{7/} and possibly even the duty, to refuse to honor the Authority's request.^{7/} In the absence of

^{5/} The fact that under 37-A M.R.S.A. § 47 and the statutes cited in note 4 the Governor orders the Treasurer to issue the bonds, whereas under 30 M.R.S.A. § 4784 the Authority requests the Treasurer to do so, does not establish that in the latter case the Treasurer has unlimited discretion. For one thing, § 4784 differs from the other statutes in that the Governor is excluded from the procedure. In addition, even where the Governor is the recipient of the request, he does not appear to have an absolute right to refuse compliance. Thus, it would be anomalous to accord such a right to the Treasurer.

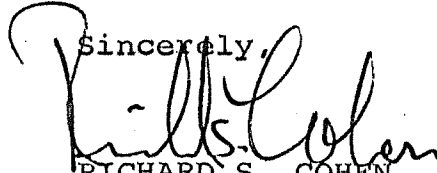
^{6/} Such a construction would be inconsistent with the Treasurer's customary role in the issuance of bonds, which is usually perceived as ministerial in nature. See Organization and Administration of the Government of the State of Maine, p. 34 (Public Service Administration 1956).

^{7/} Similar arguments can be made in support of the Treasurer's discretion regarding both the timing and the terms of the bond issue.

specific facts, however, it would be unwise for us to speculate as to what circumstances might justify such a refusal.^{8/}

I hope this information is helpful. Please feel free to contact us if we can be of further service.

Sincerely,



RICHARD S. COHEN
Attorney General

RSC:mfe

^{8/} While it would be impossible to exhaustively enumerate these circumstances, examples might include a finding that the bond issue would exceed the constitutional ceiling or that the proceeds were to be used for an illegal purpose.