

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

79-142

Inter-Departmental Memorandum Date July 27, 1979

To Richard G. Bachelder, Director Dept. Bureau of Public Improvements  
From Robert J. Stolt, Deputy Dept. Attorney General  
Subject Acceptance of deposits in lieu of retainage on construction contracts

## MEMORANDUM OF COUNSEL

This will respond to your inquiry as to whether or not "quality issues of the Maine Housing Authority" are acceptable as deposits upon withdrawal of retained funds pursuant to 5 M.R.S.A. § 1746.

As you know, 5 M.R.S.A. § 1746, in pertinent part, <sup>1/</sup> provides that

" . . . under any contract made or awarded by the State or by any public department or official thereof, including the construction, improvement or repair of any and all ways, roads or bridges with appurtenances which, by law, are under the supervision of the Department of Transportation, the contractor may, from time to time, withdraw the whole or any portion of the amount retained for payments to the contractor pursuant to the terms of the contract, upon depositing with the Treasurer of State: . . . bonds or notes of the State of Maine or bonds of any political subdivision in the State of Maine. . . ." (Emphasis added)

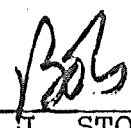
I presume from your inquiry that when you refer to "quality issues of the Maine Housing Authority" in conjunction with "bonds or notes of the State of Maine or bonds of any political subdivision in the State," that you are characterizing such quality issues as bonds or notes.

The Maine Housing Authority exists by virtue of 30 M.R.S.A. § 4601-A, et seq. as a public body corporate and politic and as an instrumentality of the State. It is not a political subdivision

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<sup>1/</sup> Your inquiry is directed to only that portion of § 1746 which refers to "bonds or notes of the State of Maine or bonds of any political subdivision in the State of Maine."

of the State <sup>2/</sup> and hence its bonds do not come within the meaning ". . . bonds of any political subdivision in the State of Maine" as that language is used in § 1746. Similarly, the bonds of the Maine Housing Authority are not, for purposes of § 1746, bonds or notes of the State of Maine.

  
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ROBERT J. STOLT  
Deputy Attorney General

RJS/ec

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2/ The Maine Housing Authority is defined as a political subdivision of the State for purposes of civil defense and disaster emergency (37-A M.R.S.A. § 53, authorities and other public corporations); and for purposes of governmental tort immunity (14 M.R.S.A. § 8102, instrumentality created pursuant to 30 M.R.S.A. c. 239). Its own provisions, however, preclude it from being considered or defined as a political subdivision of the State for purposes of 5 M.R.S.A. § 1746. See 30 M.R.S.A. § 4751, to wit: ". . . The bonds and other obligations of an authority, and such bonds and obligations shall so state on their face, shall not be a debt of the municipality, the state or any political subdivision thereof and neither the municipality nor the state or any political subdivision thereof shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. . . . "