

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)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

79-187

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

October 22, 1979

Robert C. MacFarland
Chairman
Board of Trustees
Maine Veterans Home
Thomaston, Maine 04861

Re: Borrowing Power of the Maine Veterans Home.

Dear Mr. MacFarland:

The Board has requested an opinion, through its accountant, Charles Boynton, on the issue of the power of the Board to borrow on behalf of the Maine Veterans Home for startup costs related to the operation of the nursing home after construction is completed. It is our opinion, as more fully discussed below, that the Maine Veterans Home does not have such power and must rely on other sources of funding for startup costs.

The most telling reason for this conclusion is that there is no specific statutory authorization for the Maine Veterans Home to borrow.^{1/} It is a well-settled principle that state agencies and state-related entities only have such power as is granted by statute and reasonable implication therefrom. See 81A C.J.S. States §§ 120, 142. As already noted, the relevant statutory provisions do not specifically grant the Home the power to borrow. Furthermore, there is no implication from the Maine Veterans Home statute taken as a whole that the Legislature intended the Board of Trustees to have this power.

^{1/} There is also a constitutional limitation on debts which may be incurred by the State. Me. Const., art. IX, § 14. Borrowing on the part of the Maine Veterans Home outside of its authorized bond issue might be controlled by this limitation, and the debt limit might be, unknowingly and illegally, exceeded.

The Veterans Home statute specifies in some detail the financial powers and resources available to the Board of Trustees. First, there is the bond authorization which appears in § 2 of Chapter 562, P.L. 1977.^{2/} The purpose of the bond authorization is the construction of the Veterans Home itself. See P.L. 1977, c. 562, introductory section, §§ 1, 8, 9 of § 2. In addition, of course, income will eventually be generated from charges to members of the Home, 37-A M.R.S.A. § 1406, although much of this money will presumably be used to amortize the principal and interest on the bonds, pursuant to the second section of § 2 of c. 562. Section 7 of § 2 of Chapter 562 outlines the variety of other sources of funds available to the Maine Veterans Home. Under § 7, the Board may accept "construction aid fund grants, debt service grant funds or other grants for the planning, construction, equipping or property acquisition" for the Home from any authorized agency of the federal government or other non-State sources. Finally, 37-A M.R.S.A. § 1407 allows the Board of Trustees to receive on behalf of the State bequests and donations that may be made to improve the general comfort and welfare of the members of the Home. The specificity with which the statute sets out other sources of funds available to the Maine Veterans Home also militates against a conclusion that the Board of Trustees has the power to borrow under the statute.

Finally, the express power to borrow is incorporated in a number of statutes which enumerate the powers of other state-related entities. For example, the Maine State Housing Authority is given specific power to borrow from the federal government by 30 M.R.S.A. § 4701 and the Urban Renewal Authority's power to borrow is also specified by statute. 30 M.R.S.A. § 4804(2). These examples of the specific incorporation of the power to borrow in statutes indicate, by negative implication, that the Maine Veterans Home does not have such power.

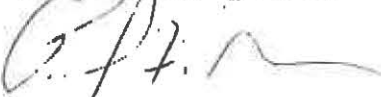
The question thus arises of what alternatives are available to the Maine Veterans Home to acquire funds for the startup costs for the Home. It would appear to this office that such funds can be obtained through grants authorized by § 7 of § 2 of Chapter 562 or by donations under § 1407.^{3/} Finally, the most practical alternative may well be to seek further appropriations from the General Fund or to attempt to have the Maine Veterans Home law amended so as to provide specifically that the Board of Trustees has the power to borrow.

2/ References to § 2 of Chapter 562 in this opinion are necessary since that portion of the Maine Veterans Home statute was not incorporated as part of the Revised Statutes. Section 2 is divided into seven further sections which will be referred to in this opinion as sections of § 2.

3/ Whether there are any limitations on the use of federal grants to the Maine Veterans Home for such costs as are here in question is a matter as to which this office has no knowledge and on which it takes no position.

I hope that this opinion clarifies the question which you have posed to this office. If you have any further problems, please feel free to contact us.

Very truly yours,



PAUL F. MACRI
Assistant Attorney General

PFM/ec