

MAINE STATE LEGISLATURE

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November 14, 1979

Philip G. Clifford, III, Manager
Maine Guarantee Authority
83 Western Avenue
Augusta, Maine 04330

Re: Confidentiality of Information in Applications for
Municipal Revenue Obligation Securities

Dear Phil:

This letter is in response to your inquiry as to whether the Maine Guarantee Authority (the "Authority") may give public notice of an application by a municipality for a certificate of approval for issuance of revenue obligation securities. I have concluded that the Municipal Securities Approval Act, 30 M.R.S.A. §5325, et seq. (the "Act"), and specifically Section 5340-A concerning the confidentiality of information supplied to the Authority in support of applications for revenue obligation securities, prohibits any such publication.

It is my understanding that the Authority has recently investigated ways to improve its ability to make findings relating to the "competitive advantage" of projects to be financed by revenue obligation securities in the course of determining whether to issue certificates of approval for such projects pursuant to 30 M.R.S.A. §5328. In this connection it was suggested that the Authority publish notice of its intent to consider an application for a certificate of approval by a municipality proposing to issue revenue obligation securities. The notice would include, I assume, an identification of the proposed tenant, the type of project proposed, and the financing being applied for. It was the Authority's view, I understand, that as a result of this kind of public notice, those most immediately affected would have an opportunity to inform the Authority of the possible competitive consequences of the proposed project.

The problem with this proposal, as you have suggested, is that the public notice would contain information which Section 5340-A of the Act protects as confidential. This section, in relevant part, provides that:

No member of the authority . . . or employee thereof shall divulge or disclose any information . . . concerning the name of any applicant, lessee or tenant or information supplied by any applicant . . . in support of an application proposing to issue revenue-obligation securities. [Emphasis added].

I have found no legislative history explaining this particular section or any court decisions construing it. Virtually identical provisions, however, are found in 10 M.R.S.A. §852 (governing the Authority's mortgage insurance activities) and 10 M.R.S.A. §875 (governing the Authority's own revenue obligation securities). In a May 19, 1977 opinion of Assistant Attorney General S. Kirk Studstrup attached hereto, the first of these provisions, 10 M.R.S.A. §852, was described as expressing "the general rule that the records and files of the MGA shall be privileged and confidential." When section 852 was amended in 1970 to allow disclosure to a special interim legislative investigation committee, the purpose of the law was further described as follows:

At the time this law was passed, it was not done out of courtesy to industry, but it was done so because the Legislature recognized that the applications must necessarily be confidential and privileged. In effect, we promised the businessmen that they could fully and completely disclose their financial status to the MIBA [Maine Industrial Building Authority], as well as all kinds of financial support that they were getting for the particular project, without the risk of political exposure which, in effect, could jeopardize the various businesses they were trying to operate. 1 Legis. Rec. 870 (1970)

I believe it is safe to assume that the same policy considerations underlie Section 5340-A for purposes of the Municipal Securities Approval Act.

Section 5331 of the Act does require a municipality to publish notice of its intent to issue securities no later than 14 days after the date of the adoption of a resolution authorizing the issuance of the securities. This notice must include, inter alia, a statement of the purpose for issuing the securities and a description of the Authority's certificate of approval. The purpose for

this notice, as reflected in Section 5331,* is to provide affected parties a one-time opportunity to challenge the legality of the proposed financing. This notice provision, although narrowing somewhat the scope of the protection, is not inconsistent with the confidentiality requirements of Section 5340-A. In the first place, it is the municipality that must publish notice of its intent to issue securities, whereas it is the Authority that is prohibited from disclosing information in an application. More importantly, the municipality's notice is published only after the municipality has received a certificate of authority and the proposed financing has been authorized by a municipal resolution, thereby avoiding the possibility that the project might be jeopardized by earlier disclosure to competitors.

In summary, I have concluded that the Authority's plan to publish notice of its intent to consider an application for a certificate of approval for revenue obligation securities, as I understand it, would violate the confidentiality requirements of Section 5340-A.

If I can be of any further assistance to you on this matter, please let me know.

Sincerely,

RUFUS E. BROWN

Assistant Attorney General

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* Section 5331(1) provides that:

"Any action or proceeding in any court to set aside such resolution or certificate of approval, or to obtain relief upon the grounds that such resolution or certificate of approval was improperly adopted, was adopted for unauthorized purposes, or is otherwise invalid for any reason, must be commenced within 30 days after the date of such publication. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of such resolution or approval or any provision thereof shall be commenced or asserted nor shall the validity of such resolution or approval or any provision thereof be open to question in any court upon any grounds whatever.