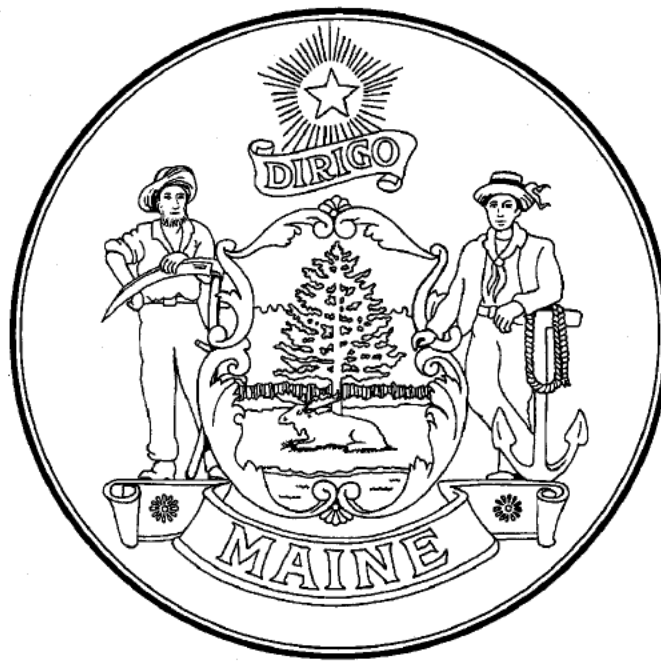


# MAINE STATE LEGISLATURE

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80-74

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AUGUSTA, MAINE 04333

April 14, 1980

Philip G. Clifford  
Maine Guarantee Authority  
State House  
Augusta, Maine 04333

Dear Mr. Clifford:

You have requested an opinion from this office on two issues regarding the interpretation of 10 M.R.S.A. §§ 671-80 (hereinafter referred to as "the Community Industrial Buildings Act" or "the Act"). Your initial question is whether that statute permits the Maine Guarantee Authority (hereinafter, "the Authority") to loan monies from the Community Industrial Building Fund (hereinafter, "the Fund") for the payment of "carrying costs" on buildings financed otherwise than under the Act. We answer this narrow question in the negative. Your second question is whether the loan of such costs would preclude the Authority from financing another building in the same county at the same time, in light of the prohibition in 10 M.R.S.A. § 676. Given our answer to the first question, we need not reach this issue.

The Community Industrial Buildings Act was enacted in 1973, P.L. 1973, c. 633, for the purpose of making funds available to municipal development corporations to build industrial building shells in order to attract industry to local communities. See Statement of Fact, Senate Document 242, amending L.D. 2033 (106th Legislature, 1973). Under the Act, the Maine Guarantee Authority is empowered to loan to local development corporations "an amount not to exceed the cost of the project, upon such terms and conditions as it [the Authority] may prescribe for the purpose of constructing a community industrial building. . . ." 10 M.R.S.A. § 676.

Once the building is constructed and sold, the loan is to be paid back to the revolving, non-lapsing Community Industrial Building Fund, 10 M.R.S.A. §§ 674, 676.

The question posed is whether the provisions of this Act may be read to allow the Authority to loan monies from the Fund to pay the "carrying costs"<sup>1/</sup> of a building erected using funds from sources other than those available under the Act.<sup>2/</sup> We answer this question in the negative on the basis of our reading of the specific provisions of the Act, its purpose and its legislative history.

The argument supporting the power of the Authority to make loans of "carrying costs" would be based on the rather broad language of § 673 of the Act, which states that "[t]he authority shall have the powers . . . [t]o provide financial and technical assistance to development corporations for the purpose of creating community industrial buildings. . . ." 10 M.R.S.A. § 673. Similar language appears in the section outlining the policies and purposes of the Act, 10 M.R.S.A. § 671. An argument based on this language, however, in our view, fails adequately to take into account the more specific provisions of the statute discussed below. It is these provisions which limit the meaning of "financial and technical assistance."

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1/ We define the term "carrying costs," for purposes of this opinion, as including costs of insurance, taxes, and interest for a building either under construction or wholly built but currently unoccupied.

2/ We do not address herein the broader question of whether the Authority is empowered under the Act to provide only partial financing to eligible projects. For example, this opinion does not reach the issue of whether the Authority could loan 50% or more of a community industrial building's cost, where the remainder comes from sources other than the Fund. Thus, we limit the scope of this opinion to the very narrow question, stated above, of the power of the Authority under this Act to make loans to cover the "carrying costs" where the totality of the actual financing comes from other sources.

It is significant that the Act contains, along with the general purpose language discussed above, specific provisions relating to the procedure whereby loans are to be made and to the administration of these loans. Moreover, the Act prescribes, in section 676, very specific requirements which must be met in order for loans to be made. Subsections (1) through (6) of that section establish specific preconditions for a loan relating to the public nature of the project; the financial condition of the debtor corporation; the viability of the project; the size of, and access to, the site; the building's compliance with relevant zoning, planning, sanitary and environmental regulations, and insurance coverage. Taken singly or together, these specific requirements strongly suggest that the Act does not contemplate that the Fund will be available for relatively small loans in proportion to the total financing of the building. These requirements suggest, instead, a degree of control over the entire financing and building process which would appear to preclude loans for "carrying costs."

Even more significant, in our view, is section 678 which provides as follows:

While the community industrial building remains unoccupied and a first mortgage is held by the Authority, it is declared to be property held for a legitimate public use and benefit and shall be exempt from all taxes and special assessments of the State or any political subdivision thereof.

10 M.R.S.A. § 678.

The thrust of this section is clear: it declares buildings financed under the Act to be of public use and benefit and affords them a substantial tax advantage: immunity from State and local taxation. We do not think that the Legislature would have intended that such favorable tax treatment inure to a building to which the Authority supplied such a small proportion of the financing. Moreover, the very existence of the tax exemption in section 678 suggests that loans for any sort of taxes were not within the intent of the Act. It thus appears that the provisions of section 678 provide a strong basis for the inference that the Act as a whole does not apply to the specific type of loans for "carrying costs" described in your request.

Section 676 of the Act requires that security for the repayment of the funds loaned under the Act "shall, in each instance, include a first mortgage on the land, or the leasehold, building and appurtenances financed by such funds." 10 M.R.S.A. § 676. Because it would seem somewhat unwieldy and impractical to apply this provision in the situation posed by your request, its inclusion also suggests that loans limited to "carrying costs" are not contemplated by the Act.

Finally, we note that the legislative history of the Act is not inconsistent with the conclusion reached herein. The Community Industrial Buildings Act was the subject of substantial discussion in the Legislature which enacted it. Read as a whole, this discussion, while not addressing your specific question, generally suggests an understanding that the Act's purpose is to provide complete funding for community industrial buildings. See, e.g., 3 Me. Leg. Rec. 4555 (1973) (remarks of Rep. Bragdon). There is no indication, either in the Act itself or in the legislative history, that the Fund was intended to be one among several sources of funds for a building of this type.

For the foregoing reasons, we conclude that the Community Industrial Buildings Act cannot be interpreted to permit the Authority to make loans to eligible corporations for the sole purpose of paying the "carrying costs" of buildings either already constructed or under construction. Although the question is not free from doubt, and indeed, the bare language of parts of the Act might be read to allow such loans, we think that such loans would contravene the underlying purpose of the statute and that they would be inconsistent with some of its specific provisions.

If you have any further questions, please feel free to contact this office.

Very truly yours,

RUFUS E. BROWN  
Assistant Attorney General

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