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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

June 13, 1980

Philip G. Clifford, Manager
Maine Guarantee Authority
83 Eastern Avenue
Augusta, Maine 04333

Re: Eligibility of Proposed Truck Stop Project

Dear Phil:

I am responding to your April 29, 1980 request for an opinion as to the eligibility of a proposed truck stop project in West Gardiner for purposes of obtaining a guarantee under the Guarantee Authority Act, 10 M.R.S.A. §701 et seq.

In our review of this matter, we examined the April 15, 1980 letter of Michael G. Byron, President, Byron Company, requesting an opinion on the eligibility of the proposed project. This letter describes the project as follows:

1. PROJECT DESCRIPTION: Adams Truck Stop, Inc., to be located on approximately 20 acres in West Gardiner at the junction of the Maine Turnpike and Interstate 95 will be a 24 hour/day full service automobile/truck plaza incorporating, under its present capitol budget, 20 diesel and gasoline pumps, a 140 seat restaurant, a service and repair garage, a 20 unit motor hotel, and a retail store. As currently contemplated, the truck stop will require revenue bond financing of at least \$1,500,000 and will create employment in excess of 75 people.

Mr. Byron concludes that this truck stop project qualifies for financing under the Maine Guarantee Authority Revenue Obligation Securities Act, 10 M.R.S.A. §861 et seq. (the "Securities Act"). We agree. That act authorizes the MGA to issue its own revenue obligation securities for "industrial-commercial projects" defined by 10 M.R.S.A. §863.4 to mean:

any building, structure, dam, machinery, equipment or facilities which may be deemed necessary for manufacturing, processing, assembling, storing, distributing, retailing or receiving raw materials or manufactured products, . . . and those for transportation . . . or public accommodation and facilities related thereto, including, but not limited to, lodging, dining or conventions. . . .

The proposed project clearly appears to be designed to store, distribute, and retail manufactured products (i.e., gasoline) and would also include public accommodations, including lodging and dining, all within the meaning of this definition.

However, we also agree with you that the same project would not be eligible for a guarantee under the Guarantee Authority Act. The authority of the MGA to guarantee mortgages derives from both the Constitution and the legislation implementing the Constitution. Article IX, Section 14-A of the Maine Constitution provides that the Legislature may enact laws to "insure the payment of mortgage loans on real estate and personal property within the State" for "industrial, manufacturing, fishing, agricultural and recreational enterprises" [Emphasis added]. The Legislature, by reason of this provision and Article IX, Section 14, may not enact any law providing for the guarantee of other types of projects. Exercising its constitutional powers, the Legislature has provided in Section 753 of the Guarantee Authority Act that the MGA is

authorized to insure the payment of mortgage loans, secured by eligible projects, and to this end the faith and credit of the State is pledged, consistent with the terms and limitations of the Constitution of the State of Maine, Article IX, Section 14-A, and such further limitations as may be provided by statute. . [Emphasis added]

(Also see §752.23 and, §803 of the Act.) The term "eligible projects," as used in Section 753 of the Act, is defined in the Act in a manner consistent with the Maine Constitution. Section 703.3 defines "eligible projects" to mean lands, buildings, real estate or machinery and equipment "used by an industrial, manufacturing, fishing or agricultural enterprise for the manufacturing, processing, assembling or preparing for market of raw material or other products. . . ."

It is quite apparent that the proposed truck stop does not fall within this definition of an eligible project. It is not an industrial, manufacturing, fishing or agricultural enterprise, and the proposed project would not manufacture, process, assemble or prepare raw materials or other products for market. Accordingly, the proposed project is not eligible to receive a MGA guarantee.

In reaching this conclusion, we recognize that Section 803.6 of the Guarantee Authority Act provides that revenue obligation securities issued by the MGA under the Securities Act are "eligible for insurance" under the Guaranty Authority Act. However, it is clear that not all revenue obligation securities are eligible for such insurance but only those projects falling within the definition of an "eligible project" as defined by the Guarantee Authority Act and the Maine Constitution. This construction of Section 803.6 is explicitly confirmed in the Securities Act itself. It is there provided in Section 866.5 that the MGA is authorized to insure loans made with the proceeds of revenue obligations securities issued by the MGA, but only "under and consistent with the terms and limitations of the Constitution of Maine, Article IX, § 14-A, and such other limitations, if any, as may be provided by statute." We would reach the same conclusion even in the absence of this specific qualifying provision because neither the Guarantee Authority Act nor the Securities Act could constitutionally authorize the insurance of a type of project which is not deemed eligible for insurance under Article IX, Section 14-A of the Maine Constitution.

Accordingly, we conclude that the proposed truck stop project is eligible for financing under the Securities Act but notwithstanding that fact is not eligible for a guarantee under the Guarantee Authority Act.

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

Sincerely yours,


RUFUS E. BROWN
Senior Assistant Attorney General

REB:jg