

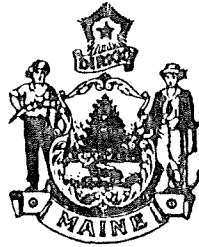
MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

January 21, 1981

Georgette Berube, Chairman
Committee on Audit and Program Review
State House
Augusta, Maine 04333

Dear Representative Berube:

I am in receipt of your request for an opinion concerning P.L. 1980, Ch. 717, An Act to Develop Elderly Congregate Housing in Maine. Your question concerns the appropriation provision contained in Section 3 of the Act. Specifically you inquire,

Since the funds were not available as of September 1, 1980, would this mean that the mandate and wishes of the Legislature have not been met and that therefore Chapter 717 cannot be funded and would preclude using funds from other sources after September 1, 1980?

For the reasons set out below we conclude that the absence of surplus funds from the State Energy Assistance Program does not preclude the congregate housing program from being funded through other sources. Moreover, the lack of surplus energy funds does not render the entire Act void.

The Elderly Congregate Housing Act established a pilot project to demonstrate the cost effectiveness of that type of housing over nursing and boarding home care for older citizens. The project is to consist of one rural and one urban congregare housing development to be completed by 1982. The construction is to be financed through the Farmers Home Administration and the Maine State Housing Authority. The appropriation contained in Sec. 3 of Ch. 717 was to be used

for resident support services such as nursing, social work, and homemaker services. That appropriation was contingent upon the existence of surplus funds remaining from the State Energy Assistance Program. Section 3 reads thus:

Sec. 3. Appropriation. If the State Budget Officer determines that sufficient funds are remaining in the State Energy Assistance Program as of September 1, 1980, to fund this chapter at \$87,360 or half of that amount after all payments have been made under that program, those funds shall be appropriated to fund the Congregate Housing Project, Bureau of Maine's Elderly, Department of Human Services.

It should be noted that the September 1, 1980, date in Sec. 3 is not a deadline precluding use of surplus energy funds that become available after that date. The amendment (S-532) that added Sec. 3 to Chapter 717 contained the following statement of fact:

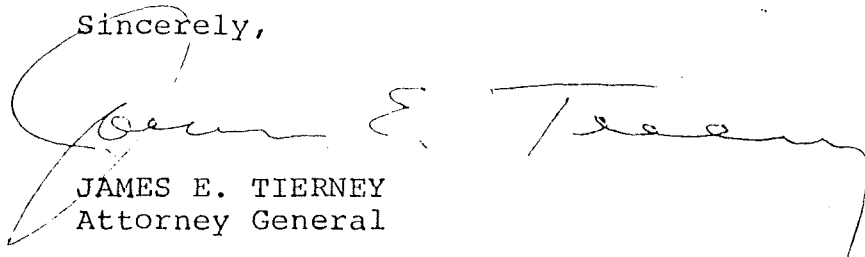
It is anticipated that as much as \$300,000 will be remaining in the State Energy Assistance Program when all bills are paid. Because congregate housing won't be built for at least one year, the funds could be appropriated to the Congregate Housing Account in time for them to be spent on support services in congregate housing. The amount of funds left over in the State Energy Assistance Program will probably be known in September, 1980.

It is clear, therefore, from this statement of fact that the Legislature intended to utilize available surplus State Energy Assistance Program funds for congregate housing regardless of the date those funds became available. The reference to September 1, 1980, in Sec. 3 was merely for the purpose of indicating the approximate time the amount of surplus program funds could be ascertained. The reason the September 1st date was chosen is likely due to a provision in the Emergency Home Heating Act of 1979 that required local program operators to return unexpended energy assistance funds to the State by August 31, 1980. P.L. 1979, Ch. 617, Sec. 3.

If sufficient surplus energy program monies are not available to fund Ch. 717, there is nothing contained in its statutory language or legislative history to indicate that the Act could not be funded through another appropriation or other sources. As indicated in the statement of fact quoted above, the housing projects would not be built for at least a year from the date of the amendment, March 26, 1980. The resident support services would not be necessary until the projects were completed and tenants had moved in. During debate in both houses Legislators expressed concern that the original bill requested an appropriation for services that would not be needed for one or perhaps two years. It is apparent that amendment S-532 was adopted to allay that specific concern. If surplus funds were not available from the energy program, ample time would remain in which to appropriate necessary funds from other sources. Needless to say, any alternative funding of the program would have to take place in conformity with applicable law.

I trust this opinion will prove helpful. If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,



JAMES E. TIERNEY
Attorney General

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