

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



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

February 19, 1982

Honorable Polly Reeves
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Reeves:

I am writing in response to your letter of February 17, 1982, in which you ask whether a municipality may raise and expend money to assist the operation of day care centers.

Your inquiry apparently stems from concern with the fact that day care centers are not specifically mentioned in the statutes which describe the purposes for which a municipality may raise or appropriate money. See 30 M.R.S.A. §§5101 and 5108. In our view, this omission does not constitute a problem. Pursuant to 30 M.R.S.A. §1917, a municipality may "exercise any power or function which the Legislature has the power to confer upon it . . . [and] which is not denied expressly or by clear implication" Since there is nothing in 30 M.R.S.A. §§5101 to 5108 which expressly denies municipalities the power to expend money for purposes not enumerated in those sections, of which clearly implies a legislative intent to that effect, we do not believe the absence of specific statutory authority would prohibit expenditures to support day care centers.^{1/}

Having concluded that the proposed expenditure is not barred by statute, I should add that as a matter of constitutional principle a municipality may raise and spend money only for a "public purpose." While it is certainly possible that support of day care centers would constitute a public purpose, that issue cannot be definitively resolved without specific information as to the nature of the proposed expenditure. Accordingly, if there is any doubt on this point, I would recommend that the town in question consult with Maine Municipal Association's legal staff, which deals with these questions on a regular basis.

^{1/} In light of this conclusion, it is unnecessary to determine whether the proposed expenditure would constitute "[s]upporting the poor" under 30 M.R.S.A. §5105(1). To make that determination more information would be necessary.

Page 2

I hope this information is helpful. Please feel free to contact me if we can be of any further service.

Sincerely,

Stephen L. Diamond

STEPHEN L. DIAMOND
Deputy Attorney General

SLD:jg

cc: Charles Jackson, Esq.
Maine Municipal Association