

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333
August 19, 1982

Philip C. Clifford, 2nd
Manager
Maine Guarantee Authority
State House Station 94
Augusta, Maine 04333

Dear Mr. Clifford:

You have requested advice on the question of whether the statutes governing the Maine Guarantee Authority (the Authority) permit it to guarantee a loan for a project to be built by a mortgagor which is already the beneficiary of a guarantee for another project. We answer this question affirmatively, subject to the condition that the new guarantee be for a separate "project" as that term is employed in the Maine Guarantee Authority Act (the Act), 10 M.R.S.A. § 1001 et seq., and not the continuation of a previous project already guaranteed by the Authority.

No specific language in the Act limits individual mortgagors to a single guarantee. The Act sets a dollar limit for each guarantee, § 1027(1)(A) and (B),^{1/} presumably to limit the Authority's exposure on any one project, but that limiting language appears to apply to individual projects and not to individual mortgagors. Section 1027(1), paragraphs A and B, both provide that the dollar limits on loan guarantees established therein apply "to any one project."^{2/} Thus, in the

^{1/} All section references are to Title 10, M.R.S.A.

^{2/} This language has been in the Act since its enactment in 1957 without change. See P.L. 1957, c. 421.

absence of any language or other indication of statutory intent supporting a contrary reading, the plain language of the relevant statute mandates this result.^{3/}

The history of the Act also supports this result. A previous provision of the Act established a cumulative limitation on loan guarantees for a corporation and its subsidiaries and affiliates, § 802(2)(A), enacted by P.L. 1971, c. 344, § 5, but this language was repealed in 1975. P.L. 1975, c. 566, § 14. This repeal not only carried out a legislative intent to eliminate the limitation on guarantees to an affiliated group of mortgagors, but also a fortiori removed any limit which might have existed as to single mortgagors. See Opinion of the Attorney General, October 17, 1977.

The combination of the absence of any limitation on the number of loan guarantees to mortgagors, the reference to single projects in setting the dollar limits on loan guarantees, and the repeal of the only language which might have been construed as intending to limit the number of guarantees to a single mortgagor leads to the conclusion that the Act does permit the Authority to guarantee loans for a mortgagor which already has outstanding guarantees.

These additional guarantees may be made, however, only if the project for which the guarantee is sought is separate from the already guaranteed project and if the project meets the other statutory requirements for guarantees. While the Act does not establish specific criteria for separateness, the Authority, in determining whether a newly proposed project is separate from a previously guaranteed one, may consider, among other factors, whether the new project was originally included as part of the mortgagors previous proposal, see § 1002(6)(C), and whether its purpose is functionally different from that of the previous project. Obviously, the question of whether a new project is separate from a previously guaranteed one is

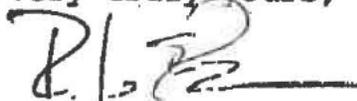
^{3/} This conclusion is also consistent with a previous opinion of this Office finding two related loans to be separate "projects" for purposes of the Act. Opinion of the Attorney General, March 29, 1968.

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factual and must be resolved by the Authority. This opinion should not be construed as suggesting a view one way or the other in this question as regards the proposed project which gave rise to this request.

I hope this information addresses your concerns. If you have any further questions, please do not hesitate to contact this Office.

Very truly yours,



RUFUS E. BROWN
Deputy Attorney General

REB:sl

cc: Charles H. Abbott, Esq.
Harold E. Woodsum, Jr.