

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



85-13

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

May 23, 1985

Honorable Donnell Carroll
Honorable Charles R. Priest
Maine House of Representatives
State House Station #2
Augusta, Maine 04333

Dear Representatives Carroll and Priest:

You have inquired whether the Maine Legislature, in removing a municipality from one county and annexing it to another, may relieve that municipality from its obligations to contribute to the retirement of bonds issued by its present county without violating the constitutional proscription against the passage of laws impairing the obligation of contracts contained in Article, Section 10, Clause 1 of the Constitution of the United States and Article I, Section 11 of the Constitution of Maine. In particular, you have asked whether the Legislature, by passing Legislative Document No. 1008, may remove the towns of Brunswick and Harpswell from Cumberland County, annex them to Sagadahoc County, and relieve them from continuing to pay toward the retirement of any outstanding debt obligations of Cumberland County to which they are currently contributing.

As you will see from the attached, this general question was the subject of an earlier Opinion of this Office, concerning the removal of the Town of Otisfield from Cumberland County in 1977. Op.Me.Att'y.Gen. (Jan. 26, 1978). That Opinion concluded that the action by a state reducing the territory of one of its political subdivisions does not necessarily unconstitutionally impair the contractual obligations to bond holders of that subdivision. This Office has investigated to determine whether any case law has developed since the issuance of that Opinion which would cast doubt upon this conclusion, and, finding none, is of the view that it remains correct.

In conducting this research, however, this Office did uncover one decision of the Supreme Judicial Court of Maine which may have a bearing on your question. In 1964, the Law Court decided Canal National Bank v. School Administrative District No. 3, 160 Me. 309 (1964), in which it held, over the vigorous dissent of two of the five Justices sitting on the case, that the detachment of three of eleven towns from a school administrative district did unconstitutionally impair the ability of the district to fulfill its bond obligations. The Court reasoned that by reducing the amount of property available for taxation to retire the bonds, the Legislature had so "destroyed" the power of taxation as to amount to an unconstitutional impairment of the bondholders' contracts. Id. at 321. The Court did not, as other courts have done, inquire into the ability of the remaining members of the district to tax to meet the district's obligations, but rather appeared to adopt the position that the removal of three of the eleven towns in the district on its face violated the Contract Clauses.

As the dissent pointed out, however, the removal of the three towns resulted in a decrease of the overall valuation of the district of only approximately one-third, leaving a total valuation of \$4,390,000 against which to pay off an indebtedness of \$730,000. Id. at 351-52. Thus, the dissenters reasoned, it was not impossible for the district to retire the debt. Id. at 352-54. Nonetheless, to the extent that the case may still be regarded as good law,^{1/} it may be read as establishing an outside limit in the degree of diminution of valuation which the Law Court will tolerate before invalidating a reduction in the size of a political subdivision.

It would appear that neither the Otisfield situation, which was the subject of the 1978 Attorney General Opinion, nor L.D. 1008 comes close to this limit. As the 1978 Opinion stated, "The property value of Otisfield represents a relatively insignificant portion of the total tax base of Cumberland County as a whole." Op.Me.Att'y.Gen. (Jan. 26, 1978) at 3. According to the 1984-85 Maine Register, the total 1983 valuation for Cumberland County was \$5,664,950,000, of which Brunswick and Harpswell constituted slightly more than

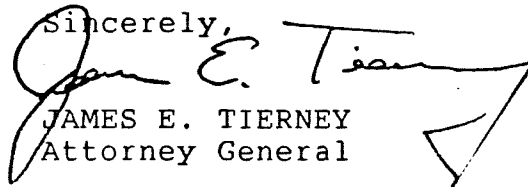
^{1/} The case has been the subject of significant adverse criticism. The authors of a review of the work of the Supreme Judicial Court for the year 1964 in the Maine Law Review described the case as "of doubtful future value as a constitutional precedent." Larson, Laurence & Ward, The Supreme Judicial Court of Maine, 1964, 17 Me.L.Rev. 100, 113 (1965). Another commentator called it "an extreme case." Carrington, Financing the American Dream: Equality and School Taxes, 73 Colum.L.Rev. 1227, 1257, n. 183 (1973).

\$500,000,000,^{2/} or less than 10 percent. Thus, the removal of these two municipalities from Cumberland County would not appear to impair the County's ability to discharge its bond obligations.

That being the case, there is no constitutional imperative that the Legislature make any arrangement for the continued contribution by Brunswick and Harpswell to the retirement of Cumberland County's debt. This is not to say, of course, that the Legislature may not attach such a condition to the removal of the two municipalities from the county. It is only to say that such a condition is not constitutionally required.

I hope the foregoing answers your question. Please feel free to reinquire if further clarification is necessary.

Sincerely,



JAMES E. TIERNEY
Attorney General

JET/ec

cc: Sen. Courtney B. Stover
Sponsor of L.D. 1008

Sen. John L. Tuttle
Rep. Edward A. McHenry
Chairmen, Joint Standing Committee on
Local and State Government

^{2/} Brunswick's 1983 valuation was \$350,350,000, and Harpswell's was \$151,450,000.

*U. S. DEPARTMENT OF JUSTICE
Bonds: Effect of Change in Jurisdiction Boundary*

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

January 26, 1978

Honorable Gail H. Tarr
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Tarr:

We are responding to your request for an opinion of this office concerning the constitutionality of L.D. 2003, "AN ACT to Allow the Town of Otisfield to meet its obligations to Cumberland County for Existing Bonded Indebtedness Through a Lump Sum Payment." More specifically, you ask whether this legislation would unconstitutionally impair the contractual obligations of Cumberland County to bondholders under Article I, Section 11, of the Constitution of Maine and Article I, Section 10, First Clause, of the Constitution of the United States. Our answer to this question is negative for the reasons stated below.

Your question arises from the removal of the Town of Otisfield from Cumberland County and its annexation to Oxford County, which was authorized by P. & S.L. 1977, c. 10 and ratified by the voters of Otisfield and Oxford County at subsequent referendum. Section 2 of this law concerns Otisfield's obligations to Cumberland County and specifies that the town's portion of existing bonded indebtedness shall be determined in a just and equitable manner by the County Commissioners and town selectmen. It is our understanding that the only significant indebtedness which requires resolution consists of bonds issued for construction of the Cumberland County Civil Center. These bonds were issued upon the full faith and credit of the County. P. & S.L. 1971, c. 86, section 7. Generally speaking, the security to holders of such bonds consists of the taxing powers of the County and the property in the County upon which taxes may be levied. Therefore, the question is

whether removal of the property in Otisfield from the tax base of Cumberland County decreases the security of the bondholders and thereby unconstitutionally impairs their contractual relationship with the County. An extension of this question is whether a lump sum payment as contemplated by L.D. 2003 would correct this situation if, in fact, it were determined to be unconstitutional.

It is settled law that a state has the authority to incorporate and set the boundaries of public corporations such as municipalities and counties, and to change the territorial boundaries of such corporations at its discretion. See generally: Laramie County v. Albany County, 92 U.S. 307 (1875); and Bowdoinham v. Richmond, 6 Me. 93 (1829). However, the question of what happens to existing obligations and indebtedness when boundaries are changed has been the subject of continued litigation. These questions began in Maine even before statehood was obtained. Windham v. Portland, 4 Mass. 384 (1808). In the case just cited, the Supreme Judicial Court of Massachusetts, sitting in the territory of Maine at Portland, held that if part of a town is annexed to another, the former town remains subject to all of the obligations and duties previously existing unless some new provision is made by the act authorizing the separation and annexation. This decision was cited with approval in North Yarmouth v. Skillings, 45 Me. 133 (1858). See also: Mount Pleasant v. Beckwith, 100 U.S. 514 (1879).

Our research has found only one case decided in Maine in which the question of impairment of a contract stemming from a boundary change has been specifically addressed. In Bowdoinham v. Richmond, *supra*, the Court held that a legislative act subsequent to the separation of Richmond from Bowdoinham, which relieved the new town of Richmond from all previous obligations for the support of paupers, was an unconstitutional impairment of what the Court found to be an existing contract between the two communities. This contract was based on the earlier separation legislation. Unfortunately, this case does not give guidance when the question concerns private, non-statutory contractual obligations between bondholders and the existing public corporation, such as those in the present situation.

Although Maine courts have not specifically addressed the question under consideration, there is abundant precedent in other jurisdictions. The general rule which may be gleaned from these cases is that action by a state reducing the territory within its political subdivisions, such as counties or municipalities, does not necessarily impair the contractual obligations to bondholders of that subdivision in an unconstitutional manner.^{1/} The most

^{1/} Only one jurisdiction, Florida, has indicated a position contrary to the general rule. See Humphreys v. State, 145 S. 858 (Fla. 1933).

commonly stated reason for this general rule is that no impairment exists in the absence of a showing that the political subdivision will be unable or any less able than previously to meet its obligations. See generally: Annotation, "Detaching Land from Municipalities" at 117 A.L.R. 267, 288, and cases cited therein.

It has been held that where the Legislature has restricted the municipal taxing power to the extent that it has practically annulled the contract under which the bonds were issued, such restriction is an unconstitutional impairment of the contract. Von Hoffman v. City of Quincy, 71 U.S. 535 (1866). However, simply decreasing the tax base of the political subdivision will not cause the same result unless it is shown that the statute has a tendency to destroy or materially reduce the taxing power.^{2/} An example of the type of dismemberment of a political subdivision which would cause unconstitutional impairment of bondholders' contracts is found in Bacon v. Road Improvement Dist. No. 1, 248 S.W. 267 (Ark. 1923), where the Legislature had excluded from the District approximately one-half of its original territory.

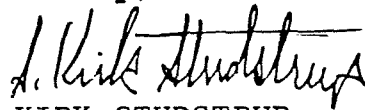
It is our understanding that the property value of Otisfield represents a relatively insignificant portion of the total tax base of Cumberland County as a whole. Therefore, in light of the general rule of law set forth above, it is our opinion that the separation of the Town from the County does not present a substantial or material threat to the contractual obligation of the

^{2/} Cases in which the courts have required a showing of substantial impairment include: Chicago Title and Trust Co. v. Hagler Special School District, 12 S.W.2d 881 (Ark. 1928)
Dortch v. Lugar, 266 N.E.2d 25 (Ind. 1971)
El Dorado Independent School Dist. v. Tisdale, 3 S.W.2d 420 (Tex. 1928)
Geweke v. Village of Niles, 14 N.E.2d 482 (Ill. 1938)
Sitte v. Paulson, 216 N.W.344 (N.D. 1927)
Tisdale v. El Dorado Independent School Dist., 287 S.W. 147 (Tex. 1926)
Town of Oneida v. Pearson Hardwood Flooring Co., 88 S.W.2d 998 (Tenn. 1935)

County to the Civic Center bondholders. There appears to be no threat that the County could not raise sufficient taxes from its remaining tax base for this purpose. Consequently, removal of Otisfield from Cumberland County would not unconstitutionally impair these contractual obligations even if no legislative remedy were provided for some contribution from the Town to payment of these obligations. The lump sum payment contemplated by L.D. 2003 would not cause any greater impairment of these obligations and, therefore, would not create problems under either of the constitutional provisions in question.

Please continue to call on us whenever you feel we may be of assistance.

Sincerely,



S. KIRK STUDSTRUP
Assistant Attorney General

SKS/ec

cc: Committee on Local and County Government