

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



85-20

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

September 30, 1985

Representative Edith S. Beaulieu
Maine House of Representatives
State House Station #2
Augusta, Maine 04333

Dear Representative Beaulieu:

You have inquired whether the practice of the Greater Portland Transit District of selling fuel and providing other services to private bus companies is authorized by the Maine law providing for the formation of transit districts, 30 M.R.S.A. § 4971 et seq., and if so, whether such authorization is constitutional under the so-called "public purpose" clause of the Maine Constitution, Article IV, part 3, section 1. For the reasons which follow, it is the opinion of this Department that the provision of such services by the District is both authorized and constitutional.

The facts, as we understand them, are as follows: Subsequent to the enactment in 1966 of a statute authorizing one or more municipalities to form a legal entity known as a "transit district" for the purpose of providing mass transportation, P.L. 1965, ch. 488, enacting 30 M.R.S.A. § 4971, et seq., the Greater Portland Transit District (the "District") was formed. At present the constituent municipalities of the District are the cities of Portland and Westbrook. The District currently provides bus service within and between the two municipalities and, pursuant to a program administered by the Greater Portland Council of Governments, purchases diesel fuel for the operation of its vehicles at a substantial discount. The District also maintains bus maintenance and storage facilities. The City of Portland is also serviced by private interstate bus lines (such as Greyhound Bus Lines), and is occasionally the destination of buses operated by charter services bringing tour groups or

groups of athletic or entertainment performers into the city. In view of its facilities, the District is uniquely capable of servicing the buses of these various organizations, including not only the sale of fuel, but also the provision of maintenance and storage facilities; and it has for some time been doing so at a profit. The question presented is whether these activities are authorized by the District's enabling legislation and, if so, whether that authorization is constitutional.

The Statement of Purpose contained in the transit district enabling legislation states that its objective is to enable transit districts "to do all things necessary to furnish motor vehicle mass transportation within that district, including charter service, for public purposes in the interest of public health, safety, comfort and convenience of the inhabitants of the municipality or municipalities comprising such district." 30 M.R.S.A. § 4971. More specifically, Section 4978 of the Act provides:

The directors of a district shall have full power to take, purchase, hold, maintain, operate, lease, rent, mortgage and convey any and all real and personal property, or to lease or sublease the same, or to enter into contracts with private companies, for the purpose of providing mass transportation services wholly or partially within the municipalities comprising the district,
. . . (emphasis added).

There is no legislative history which sheds any further light on the range of activities which these provisions authorize. Nonetheless, it is clear to this Department that the provision of the services described above to private bus companies by the Greater Portland Transit District is at least arguably within the scope of this enabling legislation.

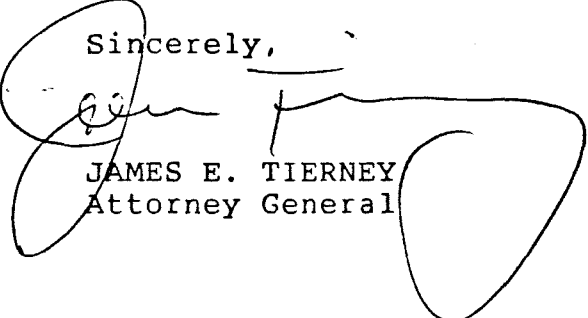
The District is, first of all, providing these services only to buses, which are incontestably instrumentalities of mass transportation, the prime statutory focus of a transit district. In addition, the statute clearly contemplates that a district may utilize its full powers "for the purpose of providing mass transportation services wholly or partially" within its constituent municipalities. Thus, it would appear proper for a district to encourage the entry of the instrumentalities of mass transportation, even those which are private in nature, into its territory. That being the case, it would not appear to be improper for the Greater Portland Transit District to permit the utilization of its facilities by such private

companies. See, generally, State v. Fin & Feather Club, 316 A.2d 351, 355 (Me. 1974) (an authorizing statute must be interpreted as granting not only those powers expressly indicated, but also those "as may be fairly implied from its language."). But see, Morrison v. City of Portland, 386 A.2d 334 (Me. 1972) (statute authorizing municipalities to operate cemeteries held not to authorize the sale of monuments or markers to the public).

Nor is it likely that the District's enabling legislation so interpreted, would be found to be unconstitutional. In its most recent pronouncement on the "public purpose" clause of the Maine Constitution, the Supreme Judicial Court of Maine noted that, with the exception of one case,^{1/} of which it disapproves, it has not "held legislation unconstitutional because it provided for taxation or the spending of public money for a non-public purpose". Common Cause v. State, 455 A.2d 1, 22 (Me. 1983). Accordingly, the Court indicated that it is inclined to give great deference to legislative determinations of public purposes. Thus, if, as here, the Legislature were to determine to authorize another governmental entity to provide low-cost fuel and maintenance services to private inter-city mass transportation companies, on the theory that the provision of such benefits would insure the continuation of such services, it is unlikely that the Law Court, wielding the "public purpose" clause, would invalidate such an authorization. See Laughlin v. City of Portland, 111 Me. 486 (1914) (legislation authorizing municipalities to provide fuel at cost to its inhabitants held not to violate the "public purpose" clause).

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

Sincerely,



JAMES E. TIERNEY
Attorney General

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^{1/} Allen v. Inhabitants of Jay, 60 Me. 124 (1872).