

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum

Date January 13, 1988To Fred Douglas, Director
Higher Education ServicesDept. Educational & Cultural ServicesFrom Jeffrey Frankel, AssistantDept. Attorney GeneralSubject Student Educational Enhancement Deposit Act, P.L. 1987, c.527.

By memo dated December 4, 1987 you sought advice as to what further acts, if any, were necessary to provide corporate protection to the Board of Directors of the Student Educational Enhancement Deposit Plan authorized by new 20-A MRSA section 12601, et seq. By memo dated October 26, 1987 you asked whether the SEED Board needed to "go through the State Contract Review Board and follow its procedures in letting contracts for goods and services."

Corporate Status

Title 20-A MRSA section 12603 reads as follows:

"1. Student Educational Enhancement Deposit Plan. There is created a public body corporate and politic to be known as the Student Educational Enhancement Deposit Plan. The plan shall be within the State Treasury, but shall exercise its prescribed statutory powers, duties and functions independently of the Treasurer of State.

2. Powers and duties. The powers and duties of the Student Educational Enhancement Deposit Plan are vested in and shall be exercised by a board of directors."

Section 12610 provides for appointment by the SEED Board members, presumably by the Governor. Section 12611 enumerates without limitation the powers of the Board.

The SEED Plan created by P.L. 1987, c.527 is a quasi-public corporation organized to perform limited governmental functions in a business setting. It is a semi-independent agency within the State Treasury authorized to engage in commercial activities for the public welfare as set forth in its legislative mandate. Perhaps the best known analogue in state government is the Finance Authority of Maine.

The creation of the SEED Plan as "a public body corporate and politic" establishes its dual status as a state agency and a

business entity. As a state agency, the SEED Plan and its directors are most likely covered by the protections from tort liability contained in the Maine Tort Claims Act, 14 MRSA section 8101, et seq. See the definition of "State" contained in 14 MRSA section 8102(4); cf. Fitzpatrick v. Greater Portland Public Development Commission, 495 A.2d 791 (Me. 1985). As directors of a corporate body, SEED Board members presumably enjoy the same immunity from personal liability for the debts or obligations of the SEED Plan as enjoyed by shareholders of a business corporation or members of a non-profit corporation.

The corporate status of the SEED Plan is self-implementing. Nothing need be filed with the Secretary of State. See 13-B MRSA section 102(4)(C), which excludes "[a]n instrumentality, agency, political subdivision or body politic and corporate of the State" from the definition of a nonprofit corporation.

Contracting Procedures

Title 20-A MRSA section 12611(5) authorizes the SEED Plan to:

"Contract for goods and services and engage personnel as is necessary, and engage the services of private consultants, actuaries, managers, legal counsel and auditors for rendering professional, management and technical assistance and advice, payable out of any money of the plan;"

Title 5 MRSA sections 1811-1824 requires that all purchases of products and services by "the State Government or by any department or agency thereof" be made through the State Purchasing Agent. See, e.g., 5 MRSA section 1812. As you know, the hallmark of the state purchasing law is the requirement of competitive bidding contained in 5 MRSA section 1816. The Contract Review Committee assists the State Purchasing Agent in evaluating bids.

I believe that the SEED Plan is a department or agency of state government subject to the state purchasing law, even in the absence of any explicit reference to the state purchasing law in 20-A MRSA section 12611(5). Therefore, all contracts for goods and services made by the SEED Plan are subject to the competitive bidding requirement and must be approved by the Contract Review Committee.

JF:lm