

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL

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

July 6, 1990

Donald Allen, Commissioner
Department of Corrections
State House Station 111
Augusta, Maine 04333

Dear Commissioner Allen:

You have requested an opinion as to whether the Legislature has waived the State's sovereign immunity in relation to a suit brought by the Warren Sanitary District should the Department of Corrections fail to fulfill its obligations under contracts proposed to be signed between the District and the Department for the construction and use of a wastewater treatment facility. In particular, you have asked whether such a waiver was accomplished by the passage of Chapter 23 of the Legislative Resolves of 1989, which authorized you to enter into an agreement with the Warren Sanitary District for the construction of a wastewater treatment facility and for the payment of user fees. The Opinion of the Department of Attorney General is that the Legislative Resolve did waive the State's sovereign immunity.

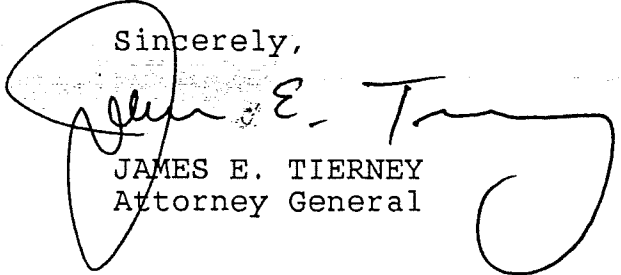
The Law Court first raised but did not decide whether the Maine Legislature might waive the State's sovereign immunity by implication in Drake v. Smith, 390 A.2d 541, 545 (Me. 1978). The Court noted the trend in other jurisdictions for finding an implicit waiver of sovereign immunity when the Legislature has enacted a statute "plainly contemplating that the State will become a party to express contracts concerning a particular subject matter." In those jurisdictions, it had been found that sovereign immunity was waived as to a suit brought against the State for the breach of such an express contract.

The Court did, however, decide to extend that trend to Maine when, in Indian Township Passamaquoddy Reservation Housing Authority v. Governor, 495 A.2d 1189, 1191 n.2 (Me. 1985), it held that the Legislature, in enacting a statute authorizing the State to enter into agreements with the Indian Housing Authorities, had implicitly waived its immunity from suit upon those agreements.

Chapter 23 of the 1989 Resolves, a copy of which is attached, has authorized the State to enter into an agreement with the Warren Sanitary District for the construction of a wastewater treatment facility and for the payment of user fees for that facility. That authorization contains the State's implicit waiver of sovereign immunity as to a suit for the breach of that agreement by the State. In other words, the District will be able to sue the Department of Corrections should it fail to abide by any contractual agreement it makes with the District that concerns the construction or use of the wastewater treatment facility.

I trust the foregoing fulfills your request for an opinion. If you should need further clarification, please do not hesitate to contact me again.

Sincerely,



JAMES E. TIERNEY
Attorney General

JET/bls
Attachment

APPROVED

CHAPTER

JUN 7 '89

23

BY GOVERNOR

RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

H.P. 1197 - L.D. 1664

Resolve, Authorizing the Commissioner of Corrections to Enter into an Agreement with the Warren Sanitary District and the Camden and Rockland Water Company to Construct a Sewer and Water System for the Warren State Prison and Pay User Fees

Emergency preamble. Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, there is an immediate need to begin work in order to have a new water system available to the Warren State Prison by 1991; and

Whereas, an agreement is necessary before work at the site may begin; and

Whereas, a commitment with the Warren Sanitary District and the Camden and Rockland Water Company is necessary in order to meet the target date; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Commissioner of Corrections shall enter into an agreement with the Warren Sanitary District and the Camden and Rockland Water Company. Resolved: That the Commissioner of Corrections is authorized to enter into an agreement with the Warren Sanitary District and the Camden and Rockland Water Company for the construction of a sewer and water system for the Warren State Prison and for payment of user fees.

Emergency clause. In view of the emergency cited in the preamble, this resolve shall take effect when approved.