

# MAINE STATE LEGISLATURE

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June 18, 1929

To Hon, Sanger N. Annis, Deputy Bank Commissioner  
Re: Alabama State Bridge Corporation as Investment for Savings Banks

. . . You ask whether or not the bonds of the Alabama State Bridge Corporation are legal for purchase by Maine Savings Banks under Article II, Section 27, Chapter 144, Laws of 1923.

The aforesaid section provides that

"Savings Banks and institutions for savings may hereafter invest their funds in the bonds or other interest bearing obligations of any State in the United States . . ."

It has been held that an obligation is a legal duty by which a person is bound to do or not to do a certain thing. It has been further held that "obligation" is, in its general and most extensive sense, synonymous with duty.

"In the more technical sense, it is a tie which binds us to pay or do something agreeable to the laws and customs of the country in which the obligation is made."

I apprehend that the Legislature, in using the words, "bonds or other interest bearing obligations of a State", had reference to those which the State itself was bound to pay,

The bonds you refer to as having been issued by the Alabama State Bridge Corporation appear to have been issued by a governmental agency of the State of Alabama, said corporation being incorporated for the purpose of "constructing or causing to be constructed, bridges and the approaches, for public use, on, or connecting highways in the State".

The Supreme Court of Alabama at its October term, 1927-28, in the case of Alabama State Bridge Corporation et al. vs. George L. Smith, has handed down an opinion concurred in by four of the justices, in which they say: "The bridges, if any, to be constructed under this act will belong to the State." It is further said by the Court that Section 213 of the Constitution is made the basis of an objection to the act. This section provides that "no new debt shall be created against, or incurred by this State", with explanations and prescriptions of no relevancy to any provisions of the act.

The act pledges the right to collect tolls until borrowed money shall be repaid:

"The residue of the receipts from the gasoline tax collected by the State under

the Excise Gas Tax Act approved January 25, 1927, and known as the Gasoline Tax Act, after there has been taken from that fund the amount necessary to meet all the primary purposes to which said Gas Tax Fund is pledged under Article XXA as an amendment to the Constitution of the State, and as provided for in Section 10 of the act approved January 25, 1927; or the interest may be paid out of the net receipts from the Convict Department, as authorized by an amendment to Section 93 of the Constitution, declared by proclamation of November 17, 1908. . .; or the interest may be paid out of any funds in the treasury as authorized by the amendment to Section 93 of the Constitution, as set out above."

The Court further says:

"Our judgment is that 'debt' within the meaning, the purview, the whole content of the constitutional provisions, is that which the State in some event is bound to pay, an obligation secured by the general faith and credit of the State. Bonds that may be issued for the construction of bridges under this act will not evidence such an obligation, will not be so secured. The surplus of the several funds pledged in the first place for the security of bonds, the proceeds of which have or will have been issued for other designated purposes, or of funds devoted to other specific purposes - these surplus funds, along with the right to collect tolls, are pledged for the security of bonds to be negotiated for the building of bridges.

"If these special funds should, for any reason, fail of realization, or should be exhausted in execution of the primary purposes for which they may be raised, nothing will be left to creditors advancing money on the faith of the bonds authorized by the right to collect tolls. There is no promise on the part of the State to pay in any event; there is no pledge that there will be a surplus of any fund; there is no pledge of the general credit of the State; there will be no debt within the meaning of Section 213."

The opinion from which the foregoing is taken is the opinion of Sayre, J., and was concurred in by Anderson, C.J., and Gardner, J., and by Bricken, J. Justice Bricken said: "I concur in the opinion of Mr. Justice Sayre and what has been so well said therein." He further said:

"Any debt incurred by the corporation will be a corporate debt for which the State will be neither legally nor

morally responsible. Persons dealing with the corporation are advised in advance by the text of the act that the tolls collected from the bridges it is authorized to construct, are specially pledged for the payment and retirement of notes, bonds and mortgages, principal and interest, as they become due, until the whole of them shall be paid.

"The provision in the act that the interest on said bonds may be paid out of certain other funds therein enumerated on requisition of the corporation, approved by the Governor, and by warrants drawn by the State Auditor upon the State Treasury designating the fund out of which said interest may be paid, does not in my opinion constitute a pledge of those funds or the faith and credit of the State, to the payment of either interest or principal.

"Persons contemplating acquiring evidences of indebtedness by the corporation are advised by the act that there is no provision or requirement that the interest shall be paid from such source, but only an authority so to do if the governor, in the exercise of executive discretion, approves such course of action. I know of no constitutional objection to the legislature lodging a discretion of that kind in the Chief Executive of the State. It is not necessary that the statute exempt the State from liability. The Constitution does that."

It would appear from the foregoing that these bonds are not the bonds of the state, nor are they a written, interest bearing obligation of the State. You are therefore advised that it is my opinion that these bonds are not legal for purchase by Maine Savings Banks under the provisions of Section 27, Chapter 144 of the Laws of 1923.

Sanford L. Fogg  
Deputy Attorney General