

# MAINE STATE LEGISLATURE

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September 25, 1937

Honorable Percy T. Clarke  
Ellsworth, Maine

Dear Sir:

Answering your recent oral inquiry as to the legality of a recent Order passed by the Governor and Council, authorizing the payment from the State Contingent Fund the sum of \$145,000 to be used in the construction of the Deer Isle-Sedgwick Bridge, I am pleased to call your attention to sections 101 and 102 and 103 of Chapter 2, of the Revised Statutes of Maine, which appear to contain all the statute law relative thereto, and nowhere in the above sections is there any provision which seems to curb the Governor and Council with respect to their expenditures, except to limit their total expenditures to \$300,000. In section 105 it is expressly provided that:

"When authorized by the governor, with the advice and consent of the council, warrants may be drawn upon, charged to, and paid out of said state contingent fund for the purposes and to the extent of any special appropriations thereto made by the legislature, and to pay outstanding bills or accounts that were properly chargeable to the several appropriations for the previous fiscal year ending the thirtieth day of June preceding the time of payment; to pay outstanding bills necessarily contracted by state departments or state institutions for which, on account of circumstances arising subsequent to the legislative appropriations for such departments and institutions, the legislature

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failed to make sufficient provision; to pay such other expenses as may be necessarily incurred under any requirement of law or for the maintenance of government within the scope existing at the time of the previous session of the legislature or contemplated by laws enacted thereat; and to pay bills arising out of some emergency requiring an expenditure of money not provided for by the legislature. So much of said state contingent fund as may be necessary for said purposes is hereby appropriated to pay such bills and expenses and for said purposes. No amount shall be expended from or charged to said fund in any year in excess of the sum of three hundred thousand dollars plus any special legislative appropriations thereto."

It has been for many years considered that the question as to what was an emergency and where an emergency existed was solely for the decision of the Governor and Council.

In the instant case the Legislature in regular session and the People at a state-wide referendum having voted certain sums to be used in the construction of the aforesaid bridge which, together with the \$315,000 generously granted by the Federal Government having unexpectedly been found, for various unforeseen reasons, to be insufficient for the construction of said bridge, I can conceive of no clearer case of the existence of an actual emergency.

It is therefore my opinion that said contingent fund appropriation was entirely within the power of the Governor and Council and therefore lawful.

Very truly yours,

Sanford L. Fogg  
Deputy Attorney General

SLF H

Augusta, Maine, Oct. 2, 1937

I hereby concur in the foregoing opinion rendered by Deputy Attorney General Sanford L. Fogg during my temporary absence from the State.

FUB H

Franz U. Burkett  
Attorney General