

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

In my opinion, the Park Commission has no authority to maintain any highways except such as may be maintained within the park areas for the benefit of the general public. It would have no authority to maintain a highway to a cemetery. It may be that that is a matter for the Legislature to consider.

Very truly yours,

FRANK I. COWAN

Attorney General

July 25, 1941

George E. Hill, Chairman
Belmont A. Smith, Member
William D. Hayes, Member

Emergency Municipal Finance Board
Augusta, Maine

Gentlemen:

In reply to query of Mr. Hayes in his memorandum of July 24th, concerning the subject of current expense, I beg to answer as follows:

1. What is the status of state taxes assessed prior to December 23, 1937?

Answer: Although the State has a legal right which makes it possible for it to treat these taxes as a debt requiring immediate payment, such an attitude would be unwise. These taxes should not be treated as current expenses but as preferred debts.

2. Status of interest on the above taxes?

Answer: Inasmuch as the interest can be added to the principal and the whole amount enforced at the discretion of the State, this interest also can be treated as a part of a past debt although if the financial situation of the City is such that the interest can be taken care of it certainly should be treated as a current expense.

3. Status of principal of bonds issued prior to December 23, 1937 having current maturity dates?

Answer: The bonds are a debt for a past consideration. The current maturity dates are promises to pay a past debt in installments at certain times. This promise is no more pressing than the expressed or implied promise to pay any other debt. But, the nature of the paper issued and recognition of the obligation is of a higher character than interest in the case of a simple note and, of course, is of a higher legal character than the implied promise to pay any current obligation.

I believe these current maturity dates should properly be treated as creating current obligations, but they are secondary in moral effect to the obligation to feed the poor, support the schools, police, fire department and the other necessary living expenses of the city.

4. Status of principal of bonds having maturity dates prior to December 23, 1937?

Answer: This is a past obligation and should not be treated as creating a current debt.

5. Status of interest on bonds?

Answer: Here again you have a current obligation second in effect to the immediate cost of operation of the city.

All of the above matters can be treated as current and if the city were solvent they certainly should be so treated but the extent of insolvency gives you a practical rule in deciding to what extent you will regard these as current. The problem is actually an administrative one and not a legal one.

Very truly yours,

July 25, 1941

Earle R. Hayes, Director
Bureau of Personnel
Augusta, Maine

Dear Sir:

I have your letter of July 23, informing me that in December, 1937 a rule was included among your Rules and Regulations which provided that: (1) so far as new appointments to the service, and/or (2) promotions within the service were concerned, council orders should be presented to the Governor and Council covering such items, in much the same manner as had been in effect prior to the enactment of the Personnel Law.

Careful consideration of the law is conclusive that such a rule violates both the letter and spirit of the law. The Personnel Board have no authority to delegate any part of their duties; and by the express terms of the Act they are prohibited from subordinating their judgment in appointments or promotions to that of any other person or group of persons.

Very truly yours,

FRANK I. COWAN

Attorney General