

# MAINE STATE LEGISLATURE

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STATE OF MAINE

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REPORT

OF THE

ATTORNEY GENERAL

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for the calendar years

1941--1942

To:  
Governor Sumner Sewall

February 1, 1943

From:  
Attorney General Frank I. Cowan

I have been giving consideration to the proposal of Robert Hawkins & Co., bearing date January 28, 1943, for refinancing Kennebec Bridge bonds.

1. Prior to September 14, 1925, Section 17 of Article IX of the Constitution of Maine provided that

“The legislature may authorize the issuing of bonds not exceeding ten million dollars in amount at any one time payable within forty-one years at a rate of interest not exceeding five per centum, payable semi-annually, which bonds, or their proceeds, shall be devoted solely to the building of State highways and intra-state, interstate and international bridges; provided, however, that bonds issued and outstanding under the authority of this section shall never, in the aggregate, exceed ten million dollars; the expenditure of said money to be divided equitably among the several counties of the State.”

On that date the people, at an election, voted to add the following words:

“The legislature may authorize, in addition to the bonds hereinbefore mentioned, the issuance of bonds not exceeding three million dollars in amount at any one time, payable within fifty-one years at a rate of interest not exceeding four per centum per annum, payable semi-annually, which bonds or their proceeds shall be devoted *solely* to the building of a highway or combination highway and railroad bridge across the Kennebec River between the City of Bath and the Town of Woolwich.”

Under the same date, the people adopted another amendment to said Section 17 of Article IX (Article XLIX of the Constitution) which increased the ten million dollar limit to sixteen million dollars and which added other features so that the first sentence of said Section 17 then read as follows:

“The legislature may authorize the issuing of bonds not exceeding sixteen million dollars . . . which said bonds issued during or after the year 1925 shall be serial and when paid at maturity, or otherwise retired, *shall not be reissued*; . . .”

That there was no question in the minds of the people that they were, by Article XLIX referred to above, amending simply the first sentence of said Section 17 is apparent from the language of Article LI, which is a further amendment of Section 17 of Article IX. In this new amendment, the first sentence of Section 17 is the same as in Article XLIX, while the second sentence is the same amendment in regard to the Kennebec River Bridge which appears in Article XLVIII. The language in regard to reissue applies solely to the sixteen million dollar item of highway and bridge bonds and definitely does not apply to the Kennebec Bridge bonds.

Again, in Article LII, an amendment adopted September 9, 1925, the authorization of highway and bridge bonds was increased to thirty-one million dollars

"in amount at any one time . . . said bonds, when paid at maturity or otherwise retired shall not be reissued."

Then follows this sentence:

"All bonds issued under the authority of this section of the constitution shall be in addition to the bonds heretofore authorized, and issued in the amount of three million dollars, the proceeds of which were devoted to the building of a combination highway and railroad bridge across the Kennebec River between the City of Bath and the Town of Woolwich."

Resolves of 1935, Chapter 94, provided for the amendment of Section 17 of Article IX by increasing the highway and bridge bonds to thirty-six million dollars, and provided that

"Said bonds, when paid at maturity, or otherwise retired, shall not be reissued. All bonds issued under the authority of this section shall be in addition to the bonds heretofore issued in the amount of three million dollars, the proceeds of which were devoted to the building of a combination highway and railroad bridge across the Kennebec River between the City of Bath and the Town of Woolwich, and in addition to the bonds heretofore issued in the amount of nine hundred thousand dollars, the proceeds of which were devoted to the building of a highway bridge across the Penobscot River between the towns of Prospect, Verona and Bucksport. . . ."

In 1939, see Chapter 94 of Resolves, the legislature submitted to the people a proposition for the increase of its bonds to an amount not exceeding, in the aggregate, forty-five million dollars in amount at any one time. This resolve contained the same prohibition against reissue, but expressly excepted from the language of the Act the three million dollar Kennebec Bridge, and the nine hundred thousand dollar Penobscot Bridge bonds, showing that, in the opinion of the legislature, these special bridge bonds were not regarded as included within said prohibition. This last amendment to the Constitution failed to receive the approval of the people at the election in September of 1939, and so did not become a part of our basic law.

Prior to 1847, at which time the sixth amendment to the State Constitution was adopted,

"There was no constitutional limitation to the power of the legislature to create debts in behalf of the State."

See Opinion of the Justices, 53 Maine 588.

The language of the Opinion of the Justices in 81 Maine 603, 604 and 605 indicates that in the absence of constitutional prohibition, the legislature may authorize reissue of outstanding bonds. That such a power was recognized is shown by the fact that the legislature has authorized such a reissue on various occasions. In fact, it was ap-

parently to prevent too free an exercise of this power that the amendment above referred to was adopted, providing that general and bridge bonds issued during and after the year 1925, when once retired, may not be reissued. The very fact that the people have readopted this provision at several elections shows that beyond question the provisions in regard to the Kennebec River bonds and the Penobscot River bonds are not within the terms of the prohibition.

The proposal that has been made calls for a reissue at the present time of nine hundred twenty-five thousand dollars of Kennebec Bridge bonds, the proceeds from the sale of which are to be used in 1947 to pay off a million dollars' worth of Kennebec bonds maturing at that time. The facts presented show that one-half of the authorized three million dollars in bonds have been already paid off and that if the State issues nine hundred twenty-five thousand dollars' worth of Kennebec Bridge bonds now, the total amount outstanding will then be only \$2,425,000. Since such a reissue would not exceed the original amount authorized, it would not be in violation of the constitutional prohibition.

2. The second question presented is a more subtle one. The proposal is that the State shall sell \$925,000 in two per cent. bonds at the present price of  $103\frac{1}{4}$ , and that it shall invest the cash so received in U. S. Treasury one and one-half per cent. bonds due December 15, 1946; that at maturity of said Treasury Bonds, the cash received from the Federal Government shall be used to redeem on June 1, 1947 the one million dollars' worth of State of Maine bonds dated June 1, 1927. The proposition presupposes that the State will have on hand at that time from the sale price of its two per cent. bonds and from the returns on the U. S. Treasury bonds an amount five hundred dollars in excess of the total necessary to redeem the one million dollar issue of State bonds falling due on June 1, 1947.

The question for consideration is this—has the legislature of the State of Maine the same authority to gamble in U. S. Government securities as a private individual? If the legislature gambles in securities of the U. S. Government, can it gamble in securities of the Republic of Cuba or of any other nation with which this country is not now at war? If it can gamble in the securities of nations, what is to prevent it from gambling in the securities of private corporations?

In the Opinion of the Justice, 53 Maine 588, the Court, in speaking of the sixth amendment to the State Constitution used the following significant language:

“The general design was to provide a check against rashness or improvidence.”

At that time a bill had, according to Governor Chamberlain, “been reported in the House of Representatives, looking to the assumption by the State of a portion of municipal debts.”

Section 3 of the bill proposed to pay various expenses of the Towns. The constitutional provision restricting the power of the legislature

to create a State debt excepted "to suppress insurrection, to repel invasion, or for purposes of war." The Court held that no matter what may have been the purpose of the municipalities in creating debts, the creation of a State debt to pay those municipal debts was not within the constitutional exceptions. The Court uses the following language on page 593:

"The bill proposes to create a debt when none now exists. It is not a bill to create a debt to suppress insurrection, to repel invasion, or for the purposes of war. It does not purport to be. It is a bill to create a debt to pay the debt or expenditures of municipal corporations, in the creation of which the State is not a party, in the disbursement of which it was not consulted, and over which it had no control, and for the payment of which it is under no present liability.

"The conclusion to which we have arrived is that the proposed bill to which you have called our attention would, if enacted, be in plain violation of the Constitution of this State."

The Court, in the above quoted instance, declared in substance that the constitutional prohibition must be strictly interpreted, and refused to give its approval to an Act of the legislature which may very well have been conceived with the idea of preserving the credit of the municipalities of the State and thereby prevent any detriment to the credit of the State itself.

In the instant case, the language of the constitutional amendment as adopted in 1925 reads:

"Which bonds, or their proceeds, shall be devoted solely to the building of a highway or combination highway and railroad bridge across the Kennebec River. . . ."

The legislature was authorized by the people to borrow money and devote it

"solely to the building of a . . . bridge."

There is no suggestion in the language of the constitutional amendment that the legislature may use the proceeds of any bonds for speculative purposes, and the investment in U. S. Treasury bonds is necessarily a speculative one. No matter how great our faith in the financial integrity of the Federal Government, we must accept the plain evidence furnished by our knowledge of current events. Whether or not the Federal Government will be in a position to meet at par its bonds falling due in 1946 depends so much on the developments of a war in which the whole world is engaged, and concerning which no one nation can be considered as the controlling factor, that we are compelled to admit there is a possibility of default. That possibility alone is sufficient to place the transaction in a speculative class, so that we can say, with the Court in 53 Maine, that the immediate purpose of the creation of the debt is not to build a bridge but

