

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

October 19, 1945

To the Honorable Governor and Council:

Subject: Maine Port Authority (Enlargement and Extension of the Present Port Facility.)

I have received from Mr. Nathan W. Thompson, attorney for the Maine Port Authority, a copy of the petition dated October 11, 1945, wherein the Directors of the Authority seek the approval of the Governor and Council to borrow funds with which to enlarge the State Pier in accordance with the plan and the facts set out in the petition. My understanding is that my advice is sought only as to the legality of this proposed undertaking, and hence I do not concern myself with the value of or the necessity for this improvement and extension.

I am of the opinion that there is ample authority in the law which would authorize the Commission to enlarge and extend the facility, and, if its funds derived from income are insufficient, to borrow funds for that purpose, providing it has first obtained the consent of the Governor and Council; but in addition to this, I am of the opinion that it also needs the consent of the Governor and Council to the making of a contract which would involve the expenditure of more than \$5000. Hence, the approval would be two-fold: 1) the making of a contract for the enlargement of the pier facilities and expending therefor the income now on hand, which it is stated amounts to approximately a quarter of a million dollars; and, 2), borrowing an additional \$300,000 by a bond issue.

For the purpose of further enlightenment of the Governor and Council I shall refer briefly to the act as amended by Chapter 5, of the Private and Special Laws of 1941, a copy of which I am submitting herewith and in which I have underscored in red crayon the pertinent provisions.

Under Section 1 (b) the Port Authority was vested with the broad purposes of acquiring, constructing and operating piers and terminal facilities at the Port of Portland. In this same section, however, it is provided that "the net income of the Port Authority may be used for improvements and extensions of the property of the Port Authority in the discretion of its directors." This clause is the same as in the law prior to the amendment of it by Chapter 5, P&SL of 1941. Prior to this amendment, however, extensions and improvements were limited to the use of the net income, and that only with the consent of the Governor and Council where the sum exceeded \$5000. By this amendment, however, which was passed as an emergency measure, you will notice that in subsection (d) there were additional powers vested in the Directors, which they could exercise with the consent of the Governor and Council and which would permit the proposed improvement of the pier. You will notice that in paragraph 1 of this subsection it is provided that it may "make any contract not otherwise authorized relating to the purposes, duties, rights, powers and privileges enumerated in chapter 114 of the private

and special laws of 1929 as amended." (This is the act that created the Port of Portland Authority.) The proposed extension would be a contract "not otherwise authorized", because the contract for the enlargement of the pier would involve an expenditure of money above the net income.

Next, under paragraph 5, the Directors were authorized to borrow money on its debentures, notes or bonds, either secured or unsecured, and, if secured, by mortgage of its property or by pledge of any part of its revenue not required for the maintenance and operation of the pier. Here is an express provision, not only to borrow money, but to secure it by mortgage on the property.

I also believe that the trend of the legislation, not only this amendment, but amendments in 1943 and 1945, would tend to show a desire on the part of the legislature to enlarge the powers of the Directors, so as to supplement that part of Section 4 (d) of the Private and Special Laws of 1929, Chapter 114, which provided in substance that it shall be the duty of the Directors to make, and so far as may be practicable, to put into execution, comprehensive plans providing on the lands now owned or hereafter acquired by the Port Authority at the port of Portland adequate piers, capable of accommodating the largest vessels, and in connection with such piers, suitable highways, waterways, railroad connections and storage yards, and sites for warehouses and industrial establishments.

Respectfully submitted,

Abraham Breitbard
Deputy Attorney General

AB:c