

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**

July 25, 1952

To the Attorney General from Assistant Assigned to Taxation
Re: Fore River Bonds

The question is raised whether Chapter 220, P & S 1951, is constitutional in the respect that it appropriates \$40,000 and \$110,000, respectively, for the 2 years of the biennium for interest on the Fore River bonds, the appropriation being from the Highway Fund.

Article IX, Section 19, Maine Constitution, Murchie Edition, provides:

"All revenues derived from fees, excise and license taxes relating to registration, operation and use of vehicles on public highways, and to fuels used for the propulsion of such vehicles shall be expended solely for . . . payment of debts and liabilities incurred in construction and reconstruction of highways and bridges, the cost of construction, reconstruction, maintenance and repair of public highways and bridges. . . and shall not be diverted for any purpose. . ."

Rephrased, the question is whether the interest on the Fore River bonds is a liability "incurred in construction of . . . bridges. . ." within the meaning of Section 19 above.

The above mentioned section was added by amendment in 1943. Similar amendments have been enacted in a great many states.

As we understand the general purpose of the amendment, it was to charge the expense of highways to the persons who used the highways. Conversely, it was to prevent the diversion of taxes occasioned by the use of highways to any purpose other than highways. There is a question whether a railway bridge may be paid for with Highway Fund money for the reason that the Highway Fund is made up of taxes exacted for the use of other types of highways, not railroads.

An analogous question has been considered at length by the Supreme Judicial Court of Massachusetts in which the Court concluded that highway money could not be used for railroad structure maintenance. It is my opinion that if the opinion of the justices can be considered law in Maine, the above mentioned appropriation from the Highway Fund is unconstitutional in whole or in part.

In Opinion of The Justices to the Senate, 324 Mass. 746, the Court was asked three questions: 1) Could the legislature term subways, tunnels, viaducts, elevated structures and rapid transit extensions used by Metropolitan Transit Authority "public highways or bridges" within the meaning of Article LXXVIII of the Amendments

to the Constitution? 2) Could the legislature provide that money for maintenance and repairs of these structures be paid without further appropriation from the Highway Fund? 3) Could the legislature appropriate from the Highway Fund for the maintenance and repairs of these structures?

The Court answered all three questions in the negative. The Court reasoned that words are used in their normal sense, the sense in which a voter at the polls uses them.

"Applying these tests in the present instance, we cannot believe that when the people adopted art. 78 of the Amendments and accepted the words 'public highways and bridges' and 'highway' contained therein, they understood those words as comprehending subways, tunnels, viaducts, elevated structures and rapid transit extensions which were designed exclusively for the use of a railway for operating its cars, and which had never been laid out, constructed or paid for as in the case of ordinary highways. To include these structures within the meaning of the words 'public highways and bridges' and 'highway' would not give to those words 'their natural and obvious sense according to common and approved usage'. On the contrary, it would give to them an unusual and more or less figurative meaning which would never occur to a voter in the polling booth." (324 Mass. 749-750)

The Court continues, admitting that there are instances in which railways have been referred to as highways by the Massachusetts court:

"But the context indicates that these references were intended by way of analogy rather than of definition, much as the ocean is sometimes referred to as the highway of the nations."

The Court found confirmation of its opinion in the general purpose of the amendment. The Court held:

"The conclusion is irresistible that the people of the Commonwealth in adopting art. 78 of the Amendments intended to make sure that the moneys exacted from owners of motor vehicles should be used solely for the purposes of highways and bridges for the use of such vehicles and could not have supposed that the highways referred to in the Amendment would include structures which were adapted exclusively for use by the cars of the Metropolitan Transit Authority and of which motor vehicles could make no use."

The case of the Fore River bridge is a little different in that the bridge is useful for both the railroad and motor vehicles.

I omit consideration of the question whether the bridge is in fact one bridge or two. Conceding that it is one bridge, not two, there is a serious question whether highway money is available to pay the interest on bonds issued to construct a bridge a substantial portion of which can only be used by a railroad. There is the subsidiary question whether a proportionate part of the whole interest may come from highway funds, or no part.

In view of the doubt cast by the Massachusetts opinion, I am emphatically of the view that court approval be obtained before reliance is had on the appropriation for interest contained in Chapter 220, P & S 1951.

Should court review be deemed necessary, there will, of course, be other questions for the court's determination.

Boyd L. Bailey
Assistant Attorney General

BLB:gd