

MAINE STATE LEGISLATURE

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August 11, 1952

To the Attorney General
Re: Fore River Bridge.

The question has been raised in regard to the proposed Fore River Bridge whether the legislative act which authorizes its construction (Chapter 154 P&S 1949) contravenes the first sentence of Section 14, Article IX of the Constitution of Maine (Murchie Edition) which reads as follows:

"The credit of the state shall not be directly or indirectly loaned in any case."

In considering this question a brief statement of general principles is helpful.

"Taxation, by the very meaning of the word, is for public purposes, and for those the right of the government, to impose taxes is unlimited."
Opinion of the Justices. 58 Me.591.

The spending of public funds as a gift or loan to assist individuals or corporations to carry on manufacturing of various kinds contravenes constitutional limitations. Although the line of demarcation is not always clear and well defined between what is for public and what for private purposes, it is clear that the State or a municipal corporation may expend public funds to maintain water works and lighting plants. Laws authorizing bounties to railroads were held invalid in several early cases, but in all jurisdictions except two or three, it is now well settled that the construction of a railroad is such a public enterprise as warrants the use of the taxing power where there are no express constitutional limitations to the contrary. Grey, Limitations of Taxing Power and Public Indebtedness, 1906, Chapter 4, Section 191.

With these principles in mind, we might well ask: What is the scope of the constitutional provision in question? This provision was added to the Constitution in 1847 by amendment and patently was designed to correct some evil then existing.

"The constitutional provision should be construed with reference to the evils he was intended to correct."

Sun Printing and Publishing Association
v. New York, 1897, 152 N.Y. 257.

Without making extensive research into the existing factual situation in 1847, we may speculate that there are at least three possible interpretations as to the scope of this provision, and we will consider each in turn.

First: This constitutional provision may prohibit the legislature from lending the credit of the state to individuals, associations or corporations for private purposes. As we have noted

above, the legislature may not exercise the taxing power for private interests. Construing the lending of the state's credit as a separate and distinct function from the exercise of the taxing power, this constitutional provision may have been designed to prevent such lending of credit. This interpretation appears to be most unlikely. It would add little to the then existing constitutional limitations, and there is little likelihood that there was any marked tendency in the year 1847 for the state to lend its credit for private individuals. However, if this interpretation should be correct, the constitutional provision in question would not apply to the act authorizing expenditures for the Fore River Bridge. This act, viewed in its strongest light as a loan of credit by the state to the railroad, is nevertheless an expenditure for a public purpose as pointed out above. A constitutional provision limiting the lending of credits for private purposes would, of course, not limit the lending of credit for public purposes.

Second: This constitutional provision may be a limitation on the power of the legislature to pledge the credit of the state for necessary public purposes. This would appear to be the most likely interpretation considering the provision in the light of its context and in regard to the few facts which we know of the existing situation in 1847. It is well settled that the provisions of a Constitution or other writing are not to be construed apart from their context, but, rather, the context is to be considered to impart meaning and to aid in the construction of an ambiguous word, phrase or sentence. The sentence in question is but the first sentence of Section 14 of Article IX of the Constitution. The remainder of Section 14 deals specifically with the debt limit of the state and exceptions thereto. As the court pointed out in Opinion of the Justices, 1866, 53 Me. 588:

"Prior to this amendment, there was no constitutional limitation on the power of the legislature to create debts in behalf of the state. The general design was to provide a perpetual check against rashness or improvidence. 'The credit of the state shall not be directly or indirectly loaned in any case.' This indicates the great purpose of the amendment."

Considering Section 14 as a limitation on the power of the Legislature to make expenditures in excess of appropriations even for necessary public purposes, the first sentence completes the picture by forbidding to the Legislature the power to otherwise lend the credit of the State in contravention of the spirit and purpose imposing the debt limitation.

An indication of the factual situation existing at the time of the passage of the constitutional provision in question is found in the address of Governor John Dana to the legislature in 1847, which reads in part:

"The history of the finances of Maine for a few years past, will show in a striking light, how soon and imperceptibly a state may change

its position from one of freedom from debt, to that of deep indebtedness. At the close of the year 1835, our whole debt was less than \$100,000; in five years from that time, it had increased to about \$1,700,000."

Page 61, 1847 Statutes.

Such a state of affairs would undoubtedly spur the people to demanding limitation on the power of the Legislature to incur future and greater indebtedness on behalf of the State.

If this interpretation be correct, we must inquire further into the effect of Section 14 on the act of the Legislature authorizing the Fore River Bridge. The Constitution is the fundamental law of the land. Limitations imposed upon legislative action may be rescinded by the people in subsequent constitutional provisions. Section 17 of Article IX expressly provides as follows:

"The legislature may authorize, in addition to the bonds hereinbefore mentioned, the issuance of bonds not exceeding \$7,000,000 in a month at any one time payable within 15 years at a rate of interest not exceeding 2% per year, payable semi-annually, which bonds or their proceeds shall be devoted solely to provide in whole, or in combination with other funds, for the construction of a combination highway and railroad bridge, including highway approaches thereto, across Fore River between the cities of Portland and South Portland in Cumberland County, as authorized by the legislature and in accordance with the terms of such authorization."

It is manifest that though the people have imposed limitations upon the act of the legislature in incurring indebtedness or lending the credit of the State for public purposes by general provision, the people have also by express provision given the Legislature authority to issue bonds for the construction of a combination highway and railroad bridge over Fore River. Both constitutional provisions must be given effect. If the provisions are in conflict, it is well settled that the special provision shall be given effect to the extent of its scope, leaving the general provisions to control in cases where the special provisions do not apply. The conclusion must follow that the act of the Legislature in authorizing the construction of the bridge over the Fore River does not violate any constitutional provision.

Third: This constitutional provision may be a limitation on the power of the Legislature to lend the credit of the State to private persons, associations or corporations where engaged in providing public utilities and where the Legislature would otherwise have the power to expend public funds or lend public credit to provide such public utilities. This interpretation would be in

accord with the experience of other states in regard to similar constitutional provisions. It will be remembered that the 19th century was the great period of construction and expansion of our railroad facilities. As pointed out above, it was determined in nearly every jurisdiction that public expenditures in aid of railroads was for a public purpose and, hence, constitutionally valid. A typical example of such public aid to railroad construction was the purchase by various governmental bodies of railroad stocks financed by the sale of public bonds. It was contemplated that dividends paid on the stock from the earnings of the railroad corporation would be received by the public bodies and used to liquidate the bonded indebtedness. However, the capital structure of most railroads contained so much water that it took many years of high warning capacity or a proceeding in bankruptcy to place the railroad on a paying basis. As a result, the governmental bodies who had invested in the railroad stock found the stock worthless and it was required to find other sources of income to liquidate its bonded indebtedness. This situation fostered many constitutional amendments forbidding governmental bodies from lending their credit in aid of any stock company, corporation or association.

It may be pointed out here that the fact that we are dealing with a railroad company and a constitutional limitation on the lending of credit may be the purest coincidence. However, we cannot overlook the fact that our constitutional provisions may have been expressly aimed at such a situation as was the experience in many other states. The application of such a constitutional provisions is perhaps best exemplified by the case of Alter v. City of Cincinnati, 1897, 56 Ohio St. 47, 46 N.E. 69. The Constitution of the State of Ohio provided:

"The general assembly shall never authorize any county, city, town, or township, by vote of its citizens or otherwise, to become a stockholder in any joint stock company, corporation, or association whatsoever; or to raise money for, or loan its credit to or in aid of, any such company, corporation or association."

In this case the Legislature of Ohio, by a "water works act", provided for a board of commissioners in certain cities to undertake to construct, and enlarge or extend water works for the city, paid for by bond secured by a lien on the water works, on the net income and on the good faith and credit of the city. The water works so constructed to be owned and operated by the city. The city was given the power of condemnation to take the necessary lands for such construction. A separate section of the law provided that the commissioners would lease a water works from any firm or person if they deem it inexpedient to build and could convey property and exercise the other powers given it on behalf of such firm or individual to aid in the construction of the water works so leased. The city to have an option to buy such water works. The court held the statute to be unconstitutional, saying:

"This section of the constitution not only prohibits a 'business partnership' which carries the idea of a joint or individual interest, but it goes farther, and prohibits a municipality from being the owner of part of a property which is owned and controlled in part by a corporation or individual. The municipality must be the sole owner and controller of the property in which it invests its public funds. A union of public and private funds or credit, each in aid of the other, is forbidden by the constitution. There can be no union of public and private funds or credit, nor of that which is produced by such funds or credit. The whole ownership and control must be in the public. The city may lease from an individual or corporation any property of which it may need the use, or having property the use of which it does not need, it may lease the same to others; but it cannot engage in an enterprise with an individual or corporation for the construction or erection of a property which, as a complete whole, is to be owned and controlled in part by the city, and in part by an individual corporation."

The court pointed out further that under the act it would be possible for the city to own the existing water works and private individuals to own the extensions, and continued:

"It would be a joining of two properties, owned by different parties, together to make one property, the parts owned by each being necessary to the successful operation of the whole, and each owner having his say as to the terms and conditions upon which the whole will be operated. The existing water works would be so tied to the extensions as to be dependent upon them, and the extensions would be so tied to the existing works as to be of little value without them. It is this close connection and dependence one upon the other that constitutes both together as a single whole, and makes a union of public and private funds and credit."

If we were to accept this interpretation of our constitutional provision, and apply the reasoning of the Ohio court as stated above, it would take but little further argument to raise grave constitutional doubts as to the validity of the act of our Legislature authorizing the Fore River Bridge.

However, we think we need not pursue this subject further. As we have pointed out under "Second", supra, there is express constitutional authorization empowering the Legislature to authorize the construction and the issuance of bonds for the construction of a combination railroad and highway bridge over the Fore River. We

think that this express constitutional provision would be controlling even under an interpretation of our constitutional provision as set out above.

In conclusion, we are of the opinion that the act of the Legislature authorizing the construction of the Fore River Bridge does not violate the first sentence of Section 14, Article IX, of the Constitution of Maine.

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