MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

Education shall have authority to reallocate any town or towns in the unions affected to unions already organized."

Section 37 of Chapter 364 of the Public Laws of 1957, after stating that it shall be the duty of the Commissioner and the State Board of Education to adjust the grouping of the school administrative units within the State, provides that:

> "I. Existing supervisory unions employing over 35 teachers and paying the superintendent of schools an annual salary of over $4,500 shall not be regrouped unless the proposed regrouping shall have first been approved by a majority of the school committee members in the administrative units involved."

The primary problem will be in obtaining the affirmative vote of the majority of the school committee members in the administrative units.

While the provision that "regrouping shall be made only upon the expiration of the current contract of the superintendent or under conditions which shall safeguard the provisions of such contract," contained in the Revised Statutes of 1954, was eliminated in the new law, such provision should still be complied with. It is a general principle, without legislation, that the State shall not pass any law impairing the obligation of the contract. It is also imperative that State officers take no action under a law that would have the effect of impairing the obligation of the contract. Thus the contract of the superintendent must be handled in a manner that contemplates the new town in a union, or the adjusting of the units should await the termination of the superintendent's current contract.

JAMES G. FROST
Deputy Attorney General

December 10, 1957

To David H. Stevens, Chairman, State Highway Commission

Re: Reimbursement of Public Utilities under Chapter 378, P. L. 1957

You have requested my interpretation of Chapter 378 of the Public Laws of 1957 in regard to how much money is made available in what fiscal years for the purpose of reimbursing public utilities under the act.

The original draft of this act contemplated use of highway funds, and the current problem was not involved. It would appear that the draftors in the hasty redrafting did not fully appreciate the financial problem or were mainly interested in getting some kind of favorable legislation.

The last paragraph of Section 1 provides for the payment of the reimbursable costs from the general fund operation capital and repayment to the fund. This is clear and correct.

Section 2 is a limiting section. It says:

> "The provisions of this act shall apply only to projects in said interstate system for which the contracts are signed prior to June 30, 1959, and at no time during the fiscal year 1957-58 or the fiscal year 1958-59 shall the *amount paid from the general fund* operating capital for the purposes of this act exceed the amount of the 90% federal funds to be

available for projects in said interstate system under the Federal-Aid Highway Act of 1956 to match a State appropriation of $12,500."

This section takes the law out of the statutes and makes it a private and special law in that it is operative and effective *only* as to projects" for which contracts are signed prior to June 30, 1959."

It then further limits the effect of the act by saying:

> "At no time during the fiscal year of 1957-58 *or* the fiscal year 1958-59 shall the amount paid from the general fund operating capital for the purposes of this act exceed the amount of the 90% federal funds . . ."

This limitation refers to *payment.* It is possible to argue that the State is limited to using only $12,500 in any year for matching. However, the act must be read as a whole. Provision is made for the non-lapsing of the 1957-58 money. This would be senseless, if it could not be used.

The use of the phrase, "during the fiscal year 1957-58 or the fiscal year 1958-59," is unfortunate, but its only reasonable intent can be to limit the expenditure to funds available under the total appropriation. If $7,500 is spent the first year and $5,000 can be carried forward to 1958-59 under Section 3, in 1958-59 there would be available in the general fund operating capital in 1958-59 the funds to match the State's appropriations. I repeat, the carryover would have no use or meaning without this interpretation.

Moreover, this is not a criminal statute. In statutes relating to governmental functions, the rule of interpretation is to presume that they were intended to be workable!

The third sentence says:

> "All unexpended balances on June 30, 1959 shall lapse . . ."

Obviously, the statute is contradictory. However, it should be interpreted in the light of its general intent, and under the presumption that it was intended to be a workable law.

The fact that in Section 2 the act was made applicable to project contracts *signed* before June 30, 1959 can be the key. Although the word "only" could indicate that this was a *limiting* phrase only (and in strict interpretation this would be true), it also could have been an attempt to make these appropriations subject to the theory of the provisions of Section 14 of Chapter 340 of the Public Laws of 1957 in reference to contractual obligations.

We know that the original act contemplated the use of highway funds and that it was intended to make the moving of utilities part of the highway project. When the proponents were convinced of the unconstitutionality of this idea, and revamped the act, they must have thought that the language used in the act meant that the signing of a contract obligated the funds.

We also know that the language used in the lapsing provisions is the customary phraseology that follows the intent of the fiscal set-up. Since the fiscal set-up permits the non-lapsing of committed highway funds, it is possible to argue that the final lapsing provisions in the third sentence of Section 3 should be read as being subject to the provisions of Section 14 of Chapter 340.

This would make it possible to interpret the whole act so that it would be workable. For example, if $7,500 of the $12,500 appropriation was used in the

first year, $17,500 would be left, properly allocated to utility costs. If contracts were signed before June 30, 1959, amounts up to this extent of the appropriation would be committed and would not lapse.

It is true that even under this interpretation, the result seems silly. The statute could have said, "Not more than $25,000 shall be obligated during the period ending June 30, 1959 and the amounts obligated shall not lapse." Yet we must remember that the redraft was hastily made near the end of the session after the Supreme Court decision on the first draft.

You have also asked what procedure to follow in case the costs of moving the utilities exceeds the available amounts.

Under Section 13 of Chapter 340 of the Public Laws of 1957, it is a criminal offense to contract for any expenditure in excess of appropriations. Chapter 378 is definite in its limitation of total expenditure. It is true that the amount necessary was unknown, but it is also true that the amount appropriated was definite and that not only the general law, but the special act limited the expenditures to the appropriation. It is also true that one of the most potent arguments used on behalf of this bill was the small cost to the State. This would justify the conclusion that the appropriation was intended to be the limit.

Under established law, the utilities must move their facilities at their own expense, except for such reimbursement as is provided in this special act. It is a moot question as to whether a utility that could qualify for reimbursement except for lack of available funds would be entitled to pro-rating from the previously paid utilities. Obviously, it is not the duty of the Commission to anticipate the exhaustion of the funds and to plan for pro-rating.

To be specific, let us presume that the first three projects used up all but $5,000 of the appropriation and that the fourth project to be put out for bids would require $10,000. The Commission could do nothing more than to notify the utility that only $5,000 was available.

In other words, the exhaustion of the special kitty for the special subsidy would end the special situation and the general law would prevail. It would be necessary for the utility to seek further legislative aid.

Another contingency that might arise would be the letting of contracts during the first year that would require more than the $12,500 appropriation. It is my opinion that the Commission could *pay out* only $12,500 in that year, but could obligate for payment in the next year.

In other words, the payments during the first year are restricted by the amount available.

L. SMITH DUNNACK
Assistant Attorney General

December 17, 1957

To Albert S. Noyes, Commissioner Banks and Banking

Re: Section 160, Chapter 59, Revised Statutes of 1954, Capital Stock

This will acknowledge receipt of your memorandum of November 25, 1957, in which you ask this office for an interpretation of Section 160 of Chapter 59 of the Revised Statutes of 1954.