

MAINE STATE LEGISLATURE

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February 6, 1958

To Robert W. Mattson, Esquire, Deputy Attorney General of Minnesota
Re: Relocation of Facilities of a Utility.

. . . You ask for any assistance or information that we can give you on three questions which you have, relating to the costs incurred by a utility in relocating its facilities as the result of the construction of the national system of interstate and defense highways:

- "1. Use of public funds for a private purpose.
- "2. An unlawful diversion of constitutionally dedicated trunk highway funds.
- "3. Violation of an existing contract (permit) between the State and a utility company which provided that the utility had the uncompensated duty to relocate its facilities when highway construction made such relocation necessary."

With respect to question #1, our Court has held, in an Opinion of the Justices, that such expenditure of public funds is for a public purpose.

With respect to question #2, our Court has held that while it is proper, with statutory authorization, to expend such moneys from general funds, it would be an unconstitutional statute that authorized expenditure of moneys for that purpose from a dedicated highway revenue (same opinion).

As the result of the aforesaid opinion our legislature enacted Chapter 378 of the Public Laws of 1957, authorizing payment of costs of relocating facilities in the interstate system and specifically appropriating funds for that purpose, outside the highway funds.

In relation to your third question, our Court exhaustively treated the statute amending the laws concerning our Maine Turnpike Authority, to the effect that the Authority should pay costs for such relocation of facilities. The Court held that with respect to the contract between the Maine Turnpike Authority and its bondholders, such statute was unconstitutional in its retrospective effect and also its prospective effect. The statute was held to be constitutional where it concerned bondholders purchasing bonds after the effective date of the act: First National Bank of Boston v. Maine Turnpike Authority et al., decided October 21, 1957, 136 A.2d 699/

It should be understood that the contract in question is between the Maine Turnpike Authority and private individuals, and the theory of the Court in deciding the statute to be unconstitutional with respect to bondholders holding bonds before the effective date of the act was that such statute impaired the obligation of the contract.

However, the situation in the State of Maine would be different where the average public utility is concerned. Referring again to question 3, which states there is an existing contract between the State and a utility company, the Constitution of the State of Maine

provides that all corporations organized in the State of Maine, whether by legislative act or under the general laws, will be further subject to subsequent amendments passed by the legislature. Thus in this State a statute imposing such laws would not violate any contract between the State and a utility company.

Another case that might interest you is Brunswick and Topsham Water District v. W. H. Hinman Company, 136 A 2d 722. . .

James Glynn Frost
Deputy Attorney General

jgf/c