

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

April 10, 1958

To Harold I. Goss, Secretary of State

Re: Use of State Flag.

We have your memo and attached correspondence with the Green Duck Metal Stamping Company relative to the use of the State of Maine Flag.

It appears that the above mentioned company contemplates an advertising program for an unnamed cereal company, whereby eventually a set of 48 flags could be procured by a purchaser of the cereal.

It is our opinion that such use of the Maine Flag violates Sections 27-32, inclusive, of Chapter 1 of the Revised Statutes of 1954, especially Section 28. These sections appear designed to prohibit the use of the flag for any commercial purpose.

It is difficult to draw statutes to embrace all conceivable situations. However, the general intent can be seen in Section 28-III:

“No person shall . . .

“Expose to public view for sale, manufacture or otherwise, or to sell, give or have in possession for sale, for gift or for use for any purpose, any substance, being an article of merchandise, or receptacle, or thing for holding or carrying merchandise, upon or to which shall have been produced or attached any such flag, standard, color, ensign or shield, in order to advertise, call attention to, decorate, mark or distinguish such article or substance.”

JAMES GLYNN FROST

Deputy Attorney General

April 23, 1958

To David H. Stevens, Chairman, Highway Commission

Re: Federal Aid Highway Act of 1958.

You have requested my opinion as to whether the acceptance by the State of the additional apportionment of \$919,343 by the federal government under the provisions of the Federal Aid Highway Act of 1958 will be in violation of the State Constitution.

Section 14 of Article IX reads as follows:

“The credit of the state shall not be directly or indirectly loaned in any case. The legislature shall not create any debt or debts, liability of liabilities, on behalf of the state, which shall singly, or in the aggregate, with previous debts and liabilities hereafter incurred at any one time, exceed two million dollars, except to suppress insurrection, to repel invasion, or for the purpose of war; and excepting also that whenever two-thirds of both houses shall deem it necessary, by proper enactment ratified by a majority of the electors voting thereon at a general or special

election, the legislature may authorize the issuance of bonds on behalf of the state at such times and in such amounts and for such purposes as approved by such action; but this shall not be construed to refer to any money that has been, or may be deposited with this state by the government of the United States, or to any fund which the state shall hold in trust for any Indian tribe. Whenever ratification by the electors is essential to the validity of bonds to be issued on behalf of the state, the question submitted to the electors shall be accompanied by a statement setting forth the total amount of bonds of the state outstanding and unpaid, the total amount of bonds of the state authorized and unissued, and the total amount of bonds of the state contemplated to be issued if the enactment submitted to the electors be ratified."

The question is, "Is acceptance of this apportionment a loaning of the State's credit?" Or in case the legislature accepts this apportionment, "Is this a creation of a debt or liability?"

It is my opinion that the answer is "No" in both cases.

In section 2 (a) of the Federal Act, the Congress appropriated \$400,000,000 for federal-aid projects. Section 2 (b) provides for expenditure of this fund in the immediate fiscal year. It is obvious that this act is a pump-priming measure to provide for the expenditure of this money as soon as possible. Its purpose is to combat the recession as well as to build roads. It is aimed to get workers busy building highways at once.

In section 2 (e), an additional appropriation of \$115,000,000 is authorized to "*increase the federal share payable* on account of any project provided for by funds made available under the provisions of this section."

This plainly states that the purpose of the additional money is to increase the *federal share* payable for the projects contemplated and provided for in section 2 (a).

Section 2 (f) reads as follows:

"Repayment of Amounts Used to Increase Federal Share.—The total amount of such increases in the Federal share as are made pursuant to subsection (e) above, shall be repaid to the Federal Government by making deductions of sums equal to the amounts so expended for projects on the Federal-aid primary highway system, the Federal-aid secondary highway system and extensions of such systems in urban areas in two equal annual installments from the amounts available to such State for expenditure on such highways under any apportionment of funds herein or hereafter authorized to be appropriated therefor for the fiscal years ending June 30, 1961 and June 30, 1962."

It is true that the word "repaid" is used herein, but it is an obvious drafting error. It is out of context, and has no relation to the procedure clearly set forth in the section. The section does not provide for any repayment by the state. Instead, it plainly charges the 1960-61 and 1961-62 anticipated appropriation for monies previously advanced. If Maine did not take advantage of this plan, it would have the full amount of the 1960-61 and 1961-62 appropriation to expend. If Maine does use this plan, it will have less money in the next biennium. The

State has its choice of two plans. But the State does not borrow any money. The State does not create a debt. It accepts money to expend this year instead of waiting until next year. It does not repay a nickel, nor does it promise to repay a cent. It is crystal clear that the intent of the act is to increase expenditure for roads during this year by advancing funds not otherwise due until the next biennium.

In strictly construing the words used in the Constitution, there definitely is no *loaning* of the State's *credit* involved. The State has no obligation to pay any money. The money involved is an outright grant made in advance of the usual procedure as part of an accelerated program.

It is true that the intent of section 14 of Article IX is to prohibit any future obligation no matter in what manner it is created. But this act creates no such liability. In no way is the State placed under any future financial obligation to raise or pay money. It is merely offered the choice of spending the money now or later.

On the same reasoning the legislature, if it accepted this apportionment, would not be creating a debt or a liability. It would be using future federal funds now instead of later.

You have further requested my opinion whether the State has the power to accept this advance.

Section 15 of Chapter 23 reads as follows:

“Provisions of Federal Aid Road Act accepted; commission to cooperate with federal government.—The provisions of the Federal Aid Road Act (public number 156) entitled, ‘AN Act to Provide that the United States shall aid the states in the construction of Rural Post Roads and for other purposes,’ approved July 11, 1916, and all other acts amendatory thereof and supplementary thereto, are assented to. The state highway commission is authorized and empowered to accept, for the state, federal funds apportioned under the provisions of the above act as amended and supplemented, to act for the state, in conjunction with the representatives of the federal government, in all matters relating to the location and construction of highways to be built with federal aid pursuant to the provisions of said act, and to make all contracts and do all things necessary to cooperate with the United States government in the construction and maintenance of public highways in accordance with the above act, as amended and supplemented. (1951, c. 321, § 2)”

This is direct authority to accept money under the provisions of the Federal Aid Road Act. It was enacted to obviate the trouble of legislatively accepting each new appropriation. In this case the Federal Government has offered a special appropriation. It is in a *provision of the Federal Aid Road Act*. The State Highway Commission is authorized to accept it.

L. SMITH DUNNACK

Assistant Attorney General