

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

February 7, 1961

To: The Honorable Dwight A. Brown
Chairman, Committee on Business Legislation
State House
Augusta, Maine

Dear Senator Brown:

We have considered your oral request for us to determine if H.P. 461, L.D. 661, may contain any legal questions, and submit the following:

It is our belief that legal problems may be present in the consideration of H.P. 461, L.D. 661.

H.P. 461, L.D. 661, is an act to regulate issuance of trading stamps. The first paragraph of the act would prohibit the use of trading stamps or any such similar device. The second paragraph of the act would exempt from the effect of the act,

- 1) Redemption of stamps or similar devices by a manufacturer or packer, within certain limitations; and,
- 2) Stamps or similar devices redeemable by merchant at face value, in cash or merchandise from stock of the merchant at regular retail prices, at the option of the holder.

We base our belief that H.P. 461, L.D. 661, contains legal problems on the fact that the decisions of courts in other states considering such legislation follow two lines with the great majority of such decisions being to the effect that anti-trading stamp legislation is unconstitutional as not being a proper exercise of police power.

A few cases, including *Steffy v. City of Casper* (*Gray v. Gold Bond Stamps, Inc.*) 357 Pacific 2d 456 (decided November 29, 1960) have held such legislation to be a constitutional use of the police power. (A Wyoming case.)

In *Steffy v. City of Casper* the court considered and upheld a statute almost identical to that proposed in H.P. 461, L.D. 661. Even so, that court struck down as being an unconstitutional classification that portion of the bill that permitted merchants to issue and redeem stamps for cash or from stock in the store.

The fact above stated, that the great majority of cases are to the effect that such legislation is bad, compels us to the conclusion that the bill poses legal problems.

Very truly yours,

JAMES GLYNN FROST

Deputy Attorney General

February 8, 1961

To: The Honorable Dwight A. Brown
Chairman, Committee on Business Legislation
State House
Augusta, Maine

Dear Senator Brown:

This memo supplements our letter to you dated February 7, 1961.

The Wyoming Court in *Steffy v. City of Casper* (Wyo), 357 Pacific 2d 456, (mentioned in our principle letter) granted a petition for rehearing, the petition

being based upon the fact that the decision of the court was in error in holding as being unconstitutional that provision of the Wyoming law which permitted merchants to issue and redeem stamps for cash or from stock in their stores.

In a decision not yet reported, so citation is unavailable, the court upheld that particular portion of the Wyoming law. The result is that the highest court of the State of Wyoming has completely upheld, as being constitutional, a law which is substantially identical to that proposed to the Hundredth Legislature in H.P. 461, L.D. 661.

This memo does not alter the conclusion that legal problems are present in such a bill, but is intended only to advise you as to the status of the Wyoming case.

Very truly yours,

JAMES GLYNN FROST

Deputy Attorney General

February 10, 1961

To: Scott Higgins, Director of Aeronautics Commission

Re: Transfer of Portland Municipal Airport to the State of Maine

We have your request for an opinion as to whether or not section 20, chapter 24, of the Revised Statutes, authorizes the Maine Aeronautics Commission to apply for and receive federal funds.

The second paragraph of the first subsection states that:

“The commission with the consent of the governor and council may, from the amounts appropriated and known as the ‘Airport Construction Fund,’ match funds with the federal government for the purpose of constructing, extending or improving state owned airports.”

It is a rule of statutory construction that the statute in question must be construed as a whole, *Morton, Pet'r v. Hayden*, 154 Me. 6, 15-16. The section of the statute quoted above would have absolutely no meaning unless it authorized the Aeronautics Commission to apply for and receive federal funds. The commission is given the authority, with the consent of the governor and council, to match federal funds. If this grant of authority did not include the power to apply for and receive these funds, the whole purpose of the section quoted above would be destroyed. The Aeronautics Commission could not match federal funds unless it could first apply for and accept those funds.

We are, therefore, of the opinion that the Maine Aeronautics Commission, under the statutory provisions quoted above, has the authority to apply for and receive federal funds, including monies designated for the Portland Municipal Airport.

THOMAS W. TAVENNER

Assistant Attorney General