

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

December 19, 1961

To: Asa A. Gordon, Coordinator of Maine School District Commission

Re: Borrowing Money for Purchase of School Busses

This is in answer to your memorandum inquiring whether or not a school administrative district has power to borrow money under the provisions of Chapter 41, § 111-K, the last two paragraphs for the purpose of purchasing school busses.

The fourth paragraph of § 111-K provides as follows:

“If the Board of School Directors deems it advisable to issue bonds or notes and the amount of the issue does not exceed 1% of the last preceding state valuation of all the participating towns in the district, the directors may call a district meeting to approve the issuance of said *bonds or notes as provided in this section* or they may proceed as follows: When the Board of School Directors of the district determine that bonds or notes for capital outlay purposes shall be issued in an amount not to exceed 1% of the total of the last preceding state valuation of all the participating towns, they shall pass a resolution to that effect, setting forth the amount of the proposed issue and the purpose or purposes for which the proceeds will be used.” (Emphasis supplied)

The reference to “bonds or notes as provided in this section” underlined above refers to the authority of the directors to issue bonds or notes for capital outlay purposes as defined in Section 237-H. The definition of “capital outlay purposes” contained in Section 237-H refers only to construction of school buildings and not to acquisition of busses.

Under Section 111-K, first paragraph, the directors could issue a note for current operating expenses for the district to be repaid within one year. The purchase of a bus would appear to be a current operating expense of the district, see Section 111-N, the last sentence.

It is our conclusion, therefore, that the Board of Directors could not issue a note for more than one year for the purchase of the busses but there is nothing to prohibit the directors from entering into a conditional sales contract for more than one year so long as the conditional sales contract does not have a note appended to it which runs for more than a year.

RICHARD A. FOLEY

Assistant Attorney General

December 20, 1961

To: John R. Dyer, Purchasing Agent, Bureau of Purchases

Re: Move of M.E.S.C. Offices — Bid No. 62-477

In answer to your memo of December 18th last we reiterate our position with respect to M. G. Morissette & Sons, Inc.

There seems to be no question that the low bidder, M. G. Morissette & Sons, Inc., cannot perform the services for which it bid because it does not have sufficient transportation authority to do so. It is not, therefore, in our opinion the

lowest *responsible* bidder as required by Revised Statutes 1954, ch. 15-A, § 39, VII.

Item #21 of the conditions and instructions to bidders on the back of the "Request for Bids" does not apply to the situation at hand. It reads "No contract may be assigned, sublet or transferred without the written consent of the State Purchasing Agent." There is no contract between M. G. Morissette & Sons, Inc. and the State of Maine. A contract implies the acceptance by the State of the bid of a responsible bidder. There is no contract to assign, sublet or transfer here.

We advise you to reject the bid of M. G. Morissette & Sons, Inc.

FRANK E. HANCOCK

Attorney General

December 21, 1961

To: Lloyd K. Allen, Commissioner of Economic Development

Re: Non-Profit Corporation re New England States Committee on World's Fair

The New England States Committee on the World's Fair has suggested forming a non-profit corporation under Massachusetts law for the purpose of handling funds of the six states appropriated for planning and/or erecting exhibits of each state at the New York World's Fair, 1964-65.

Question: You have asked if you as an individual or as Commissioner have a right to become a member of the corporation.

Answer: You as an individual may become a member of such a corporation. As long as a corporation does not have interests incompatible with your office you may be a member of such corporation. In fact, the only way you can be a member of a corporation is as an individual. It is not possible for the Commissioner of the Department of Economic Development to be a member of a corporation. The Commissioner is a title not a person and a title cannot be a member of a corporation. Such member must be a person. So it would have to be Lloyd K. Allen who would be the member.

Question: May the Governor and/or the DED pay over to such a corporation the funds appropriated by Chapter 221, Private and Special Laws, 1961?

Answer: No. Under the provisions of section 2 of the Act the Governor or his designee (DED) in carrying out the objectives of the Act "shall cooperate with the Governors of the other New England States, or their designees, and with the New England Council in such manner as appears in the best interests of the State . . ."

It is clear that the Maine legislature expects the Governor, or his designee, to work with like people from the other New England States and with the New England Council. No mention is made or even hinted that a third legal entity shall be injected into the picture. A non-profit corporation would be a new legal entity not contemplated by our legislature.

We, therefore, conclude that if such a corporation is formed the Governor, or his designee, has no authority to pay over any of the appropriation made by Chapter 221, Private and Special Laws, 1961, to said corporation.