

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

Please direct to my attention any present, specific conflicts in order that I may assist you in resolving them.

JOHN W. BENOIT, JR.
Assistant Attorney General

January 9, 1963

To: Niran C. Bates, Director of Public Improvements

Re: Educational Television

You have asked this office for an interpretation of the respective responsibilities of the University of Maine and the Director of the Bureau of Public Improvements in relation to the construction of educational television facilities under the provisions of Chapter 247 of the Private and Special Laws of 1961.

The fundamental basis on which this opinion rests is the proposition that educational television is a state-wide facility as opposed to a project for the benefit of the University of Maine.

This conclusion is based on four parts of Chapter 247.

1. Section 1 provides in the first sentence:

“There is created a Committee on Educational Television for the purpose of facilitating the development of educational television in this State.”

This language which opens the Act indicates that the educational television program is for the whole state.

2. The composition of the Committee set forth in section 1 is another indication of the state-wide aspect of this program. The committee is made up of 7 members, one a representative of the State Department of Education; one a representative of the University of Maine, and five citizens of the State of Maine.

3. Section 3-A provides that the Governor and Council are the body authorized to accept gifts and federal grants-in-aid.

4. Section 4 provides in part:

“The University of Maine is authorized to . . . for the purpose of providing a *state-wide educational television network* for the transmission of educational television to pupils in the schools, colleges, university and adult audiences *throughout the state;*” (Emphasis supplied).

There can be no doubt when one reads these parts of the first four sections that the legislature intended to provide a state-wide television network provided at state expense by state agencies.

As further evidence of this conclusion, a reading of acts of the legislature authorizing bond issues will bear out this conclusion. Particularly does it become apparent in comparing Chapter 174, Private and Special Laws 1959, “An Act Authorizing the Construction of Housing for the University of Maine and the Issuance of not Exceeding \$10,000,000 Bonds of the State of Maine for the Financing Thereof” (hereinafter called U. of M. bond issue), with the Educational Television Act, Chapter 247, Private and Special Laws, 1961, (hereinafter called ETV bond issue).

Section 3 of the U. of M. bond issue varies in the first sentence from the ETV bond issue, section 7. The U. of M. bond issue provides:

“The Treasurer of State is hereby authorized, *under the direction of the Board of Trustees of the University of Maine with the approval of the Governor and Council*, to issue bonds. . . .”

(Emphasis supplied).

The ETV bond issue provides:

“The Treasurer of State is authorized, *under the direction of the Governor and Council*, to issue from time to time serial coupon bonds. . . .” (Emphasis supplied).

The U. of M. bond issue gives the authority to the Board of Trustees to direct issuance of bonds with the approval of the Governor and Council. The ETV bond issue *gives sole authority to the Governor and Council to direct the issuance of the bonds*. This fact is most significant in showing the intent of the legislature to make ETV a state function as opposed to a University of Maine function.

Section 5 of the U. of M. bond issue is significantly different from section 9 of the ETV bond issue. Section 5 of the U. of M. bond issue gives the Board of Trustees of the University of Maine the direction, with approval of the Governor and Council, of the sale of the bonds. The Board of Trustees is also authorized to draw warrants for expenditures. The ETV bond issue, however, provides for the Governor and Council to direct the sale of such bonds and to issue its warrants for the expenditures.

These differences in the Act are another significant feature to be considered in determining whether Educational Television is a state-wide or University of Maine function.

Section 8 of the U. of M. bond issue provides:

“The proceeds of such bonds shall be expended under the direction and supervision of the Board of Trustees of the University of Maine.”

Compare section 6 of the ETV bond issue which says, in part:

“The proceeds of the bonds authorized under this Act shall be expended under the direction and supervision of the Director of the Bureau of Public Improvements. . . .”

A careful reading of the two Acts and a detailed comparison of the several sections of each Act leads to the definite conclusion that Educational Television, as contemplated by this Act, is a state function rather than a function of the University of Maine.

Now what does this mean in relation to the University of Maine and the Director of the Bureau of Public Improvements as far as construction of educational television facilities are concerned? To obtain the answer it is necessary to read R. S. Chapter 15-A, sections 24-33. These sections set forth the functions and duties of the Bureau of Public Improvements.

First: Section 25 subsection VI provides:

“To approve the selection of qualified practicing Maine registered architects and engineers in the planning and supervision of construction and public improvements;”

This means that any architect or engineer hired to plan and supervise construction of television facilities must be approved by the Bureau of Public Improvements.

Second: Subsection VIII provides:

“To approve all proposals, plans, specifications and contracts for public improvements which require their submission to the governor and council for their final approval and acceptance;”

Inasmuch as the final contract for building educational television facilities must be approved by the Governor and Council, section 9, plans and specifications must be approved by the Bureau before they are advertised for bids.

Third: The bids for construction of the facilities must be opened by a committee of the Council and the Trustees authorized to sign a contract with the successful bidder. The contract must be approved by the Director of the Bureau of Public Improvements and as to form by the office of the Attorney General.

Fourth: Subsection IX states the inspection duties of the Bureau. Thus all, so-called, change orders must be approved by the Bureau.

Fifth: Subsection XIV, together with section 6 of the ETV bond issue, requires the Director of the Bureau to approve all claims for payments submitted by the architect or engineer and the general contractor.

Sixth: Subsection X requires that the Director of the Bureau promptly inspect all public improvements upon completion and to make recommendations for the acceptance or rejection of the project.

The legislature certainly intended this procedure to be followed in the construction of educational television facilities. This is the normal procedure followed by all state departments and the Bureau in the construction of state buildings and facilities.

It should be noted, however, that everything appearing in this opinion is confined solely to the construction of educational television facilities under Private and Special Laws 1961, Chapter 247. Nothing contained in this opinion is to be used or construed as applying to any other construction project involving the University of Maine.

GEORGE C. WEST

Deputy Attorney General

January 9, 1963

To: Governor John H. Reed, Executive

Re: Deduction of Labor Union Dues

In answer to your request for an opinion relating to labor union dues deductions, the following answers are respectfully submitted:

1. No payroll deductions may be made without appropriate legislation or, in the absence of the legislature, authorization by the Governor and Council. This would apply to deductions for labor union dues.

2. If such action is sought while the legislature is in session, the usual procedure of drafting a bill and having a sponsor should be followed. When authorization from the Governor and Council is sought, in the absence of the legislature, a council order may be presented by any person. Such an order does not have to originate from a state official.