STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

Opinion No. 2:

There is no provision in the motor vehicle laws for the styling of trailers as "box trailers" or "four-wheel box trailers." The manner of such a styling is an administrative decision of the Registry of Motor Vehicles. It would be suggested that a styling such as a "four-wheel trailer" would be more appropriate than a "box trailer" or a "four-wheel box trailer."

Assuming the 1948 Chevrolet chassis has a gross weight of over 2,000 pounds; and since it is not a farm trailer, boat trailer, house trailer, nor camp trailer of the covered wagon type, the trailer must be classified and rated, for purposes of registration fees, as a truck. R. S. 1954, c. 22, § 16, III, as amended. Further assuming that such a chassis would have a gross weight of not more than 6,000 pounds, the registration fee would be $15.00. *R. S. 1954, c. 22, § 19,* as amended.

JEROME S. MATUS
Assistant Attorney General

May 22, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Extra-Construction of Building on Property Held by Maine School Building Authority

Facts:

The Maine School Building Authority (hereinafter called Authority) has received a request from the appropriate officials of a Maine town requesting permission to construct a school building, at the Town's own expense, on land presently owned by the Authority. The Authority favors the granting of a portion of its land to the Town for such use, thereby foreclosing the necessity of the Authority taking title to and responsibility for the new structure. Presently the Town and the Authority are parties to an agreement drawn pursuant to R. S., c. 41, § 243 to 259.

Questions:

1. Whether the Authority may legally grant (deed) to the Town a portion of land which presently is the subject matter of the procedure decreed in R. S., c. 41, § 243 - 259?

2. If not, may the Authority legally authorize the Town to construct a school building on said land?

Answers:

1. No.
2. No.

Reason:

Applicable statutory provisions are as follows:

"Sec. 247. Definitions.

" 'Project' or the words 'school project' shall mean a public school building or buildings or any extension or enlargement of the same, including land, furniture and equipment for use as a public school or public schools, together with all property, rights, easements and interests which may be acquired by the Authority for the construction or the operation of such project." *R. S., c. 41.*

"*Sec. 252. Remedies.* Any holder of bonds issued under the provisions of section 243 to 259, inclusive, or any of the coupons appertaining thereto, and the trustees under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the state or granted hereunder or under such trust agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by sections 243 to 259, inclusive, or by such trust agreement or resolution to be performed by the Authority or by any officer thereof." *R. S., c. 41.*

Applicable provisions of the Trust Agreement existing between the Authority and the Corporate Trustee are:

"ARTICLE I.

"DEFINITIONS.

"Section 101. . . . .

"(c) The word 'Project' shall mean any school project (as defined in the Enabling Act) which shall be financed by revenue bonds issued under the provisions of this Agreement and which shall be leased to any town or community school district.

. . . .

"ARTICLE VII.

"PARTICULAR COVENANTS.

" . . . .

"*Section 707.* The authority covenants that, except as provided in Section 505 of this Agreement, it will not sell, lease or otherwise dispose of or incumber any Project or any part thereof and will not create or permit to be created any charge or lien on the rentals derived therefrom." (Section 505 provides for the conveyance of the project to the town or district when all bonds have been paid.)

Article VII, § 707 of the Trust Agreement executed February 1, 1952, by and between the Authority and the Corporate Trustee prohibits the Authority from selling any portion of any 'Project.' The term 'Project,' as defined by the applicable statutory provision (R. S., c. 41, § 247) and the Trust (Article I, § 101, [c]), means a public school building, "including land." The answer to the first question must be in the negative.

Article VII, § 707 of the said Trust Agreement also prohibits the Authority from allowing an incumbrance to exist against any Project. Our Supreme Judicial Court has defined an incumbrance as "an embarrassment of an estate or property, so that it cannot be disposed of without being subject to it." *Newhall v. Union Mutual Fire Insurance Co.*, 52 Me. 180, 181. The same Court, in *Campbell v. Hamilton Mutual Ins. Co.*, 51 Me. 69, 72, adopted the definition of the term incumbrance as stated in Worcester's Dictionary: "Incumbrance — liabilities resting upon an estate." The contemplated construction would constitute an incumbrance upon the Project. Article XIII, § 1303 of the Trust Agreement characterizes bondholders as being third-party beneficiaries concerning the provisions of the Trust.

Note, too, that the Legislature has decreed upon the status of bondholders respecting remedies available to them for default of Trust provisions, inter alia. *R. S., c. 41, § 252.* The answer to the second question must also be in the negative.

JOHN W. BENOIT
Assistant Attorney General

June 3, 1964

To: Philip R. Gingrow, Banks and Banking

Re: Collection of small loans made in other states.

Facts:

From time to time small loan companies in other states make loans to individuals, resident in another state. The individual, before completing payment of the loan moves to Maine. The loan company then sells the loan to its Maine corporation. In one instance the so-called parent corporation has two Maine corporations. One Maine corporation is a licensed small loan company. The other is a corporation engaged in purchasing sales contracts and making loans in excess of $2,500.

A question has arisen around the purchase in Maine, of pre-computed or add-on loans by the non-licensed corporation.

Question:

Do Sections 222 and 224 require that a person or corporation be licensed under Sections 210-227 before being permitted to collect loans of the amount of $2,500 or less, for which a greater rate of interest, consideration or charges than is permitted by Sections 210-227 has been charged, contracted for or received when such loan was made in another state which has in effect a regulatory small loan law similar in principle to Section 210-227.

Answer:

No.

Opinion:

The answer to this question is found in R. S., C. 59, § 224.

> "No loan of the amount of $2,500 or less, for which a greater rate of interest, consideration or charges than is permitted by section 210 to 227, has been charged, contracted for, or received, wherever made, shall be enforced in this State. Every person in anywise participating therein in this State shall be subject to sections 210 to 227. The foregoing shall not apply to loans legally made in any state to a person who is at that time a resident of that state, which has in effect a regulatory small loan law similar in principle to sections 210 to 227."

The above section was completely rewritten by P. L. 1963 C. 141, § 5. Prior to September 21, 1963 a loan bearing interest greater than allowed by sections 210 to 227 "wherever made" was not enforceable in this state. Although the wording of the first two sentences above quoted is somewhat changed, the intent is not. However the third sentence which has been added now changes the whole concept of section 224 as it was previously worded.