

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1965 - 1966

determined that it was overpaid. This conclusion also finds support in the general rule stated herein.

Question No. 2.

It is clear that under the statute that this question must be answered in the negative.

Under normal circumstances, i.e., when no assessment of the tax has been made which has become final, the taxpayer has two years from the date of overpayment to apply for a refund.

However, if an assessment has been made within the two-year period covering in part an alleged overpayment and the assessment has become final the taxpayer cannot utilize the provisions of section 2011.

The legislature has taken such a situation out of the operation of the two-year period of limitation by providing as follows:

“Nothing shall authorize the taxpayer, or anyone in his behalf, to apply for a refund of any amount assessed when the assessment has become final as provided in section 1957.” Title 36 M.R.S.A. § 2011.

In other words, if an assessment has been made and has become final the two-year statute does not apply; if no assessment of the tax in question has been made and the taxpayer has voluntarily reported and paid it, the two-year period applies and commences to run from the date of payment of the tax.

It is possible that a further question could arise, if for example, the taxpayer paid the tax initially after it was required to be due – the question being should the two-year period begin to run from the time the tax was actually due or when it was paid. However, since the facts here do not indicate such a question, it is not answered.

JON R. DOYLE
Assistant Attorney General

June 9, 1965
Education

Keith L. Crockett, Secretary-Treasurer
Maine School Building Authority

Grants for Water Pollution Control on M.S.B.A. Property.

FACTS:

With the assistance of the Maine School Building Authority, the Town of Windham has recently completed the construction of a new high school. 20 M.R.S.A. § 3501-3517. The Windham town officials filed an application with the Federal Government seeking a Federal grant to help defray the cost of a sewage disposal plant for the project. Federal funds were forwarded directly to the town officials, and evidently set aside by them to help defray the cost of the first lease payment due the Authority. Federal auditors are now questioning the legality of the Town's application for the grant inasmuch as the land and buildings are owned by the Authority. The auditors contend that the Authority should have been the applicant; should have received the funds; and should have made them a part of the total funds for the project.

QUESTIONS:

Your memorandum poses four questions:

1. Does this office believe that the Authority should be the applicant for projects of this nature?
2. Does this office concur in the concern expressed by the Federal auditors with respect to the legal implications of such applications?
3. Does this office foresee any arguments, pro or con, which would tend to strengthen or weaken the Authority's position with respect to such matters?
4. Does this office recognize any parallel between this type of grant and monies received from N.D.E.A. funds for furnishings? (Note: Towns have used these funds without any turnover to the Authority.)

ANSWERS:

The answers appear below in the REASON.

REASON:

For the reasons stated herein, it is decided that the Town was the proper applicant for the Federal grant; and that the Federal monies have been properly forwarded to the Town.

According to an applicable provision of the Maine Statutes governing Maine School Building Authority projects: "The authority may authorize any administrative unit, subject to the supervision and approval of the authority, to design and construct any project and to acquire necessary land, furnishings and equipment therefor." *20 M.R.S.A. § 3507*. Since the sewage disposal plant constituted a part of the Windham project at the time the Authority approved said project, the Town has received Authority authorization to make application for the Federal grant regarding the sewage disposal plant.

According to the reference provision cited above and the provisions of the Lease Agreement existing between the Town and the Authority, the Town of Windham is the Authority's agent regarding the construction of the project; and the Authority has complied with the statute in granting to the Town full authority regarding construction of the project.

We are informed by your department that none of the proceeds of the Authority's bond issue is involved in the sewage plant construction; and that the Town of Windham is supplying its own funds as the applicant.

We have examined the following forms (in blank) utilized by the Town in making application for the reference Federal grant: (1) The application (P.H.S.-2654-1), and (2) The offer and acceptance form (P.H.S.-2690-1). Further we have examined the instruction sheet (P.H.S.-2654-1) and have also examined Title 42, Subchapter D, Part 55, Subpart B, which covers grants for construction of sewage treatment works. The reference Title constitutes a regulation in the area of water pollution control construction grants. The applicable Federal statute in *33 U.S.C. § 466, et seq.*

We are mindful of the provision appearing in the reference regulations at § 55.26 (m), wherein it is stated: "That the applicant will demonstrate to the satisfaction of the Surgeon General that he has or will have a fee simple or such other estate or interest in the site of the project, including necessary easements and rights of way as the Surgeon General finds sufficient to issue undisturbed use and possession for the purposes of construction and operation for the estimated life of the project; * * *." Regarding this language, it is noted here that the Town of Windham has the requisite estate or interest in the site of the project, including necessary easements and rights of way, as entitled it

to make the application for the Federal grant. Again, the Town of Windham has been authorized by the Maine School Building Authority to construct the project and its attending sewage disposal plant. The Town of Windham, in view of the applicable Maine Statutes, possessed the requisite "estate or interest in the site of the project" which authorized it to make the application for the reference Federal grant.

In our reading we have included an examination of the pertinent provisions of the Maine Statutes as they pertain to the Water Improvement Commission. *38 M.R.S.A. § 361, et seq.*

It is to be noted that we have not been apprised of the contents of the application made by the Town of Windham and of the statement therein relative to § 3: legal information. And it is to be further understood that this opinion predicates the right of the Town, to make application, upon the fact that the Town possesses the requisite estate or interest in the site of the project; and not upon the element of ownership. Of course, we realize that our opinion is not binding upon the Federal authorities.

JOHN W. BENOIT
Assistant Attorney General

June 10, 1965
State

Kenneth M. Curtis, Secretary of State

Eligibility for Restoration of Operator's License

FACTS:

An individual was convicted of driving under the influence in 1948, 1954, and in June, 1963. He sought a pardon for the 1954 conviction in 1965. It was granted. He then sought restoration of his license.

In 1959, the legislature passed the so-called "10-year" law. It was repealed in 1963; the repeal became effective in September, 1963. Because the 1963 conviction and suspension was prior to the repeal of the so-called "10-year" law, it was understood that upon pardon of the 1954 conviction the person would have only the 1963 conviction on his record and so would be eligible for restoration of his operator's license.

QUESTION:

Is this individual now eligible for restoration of his operator's license?

ANSWER:

No.

REASONS:

Chapter 144 of the Public Laws of 1959 amended the last sentence of the next to the last paragraph of section 150, chapter 22, R. S. 1954, to read as follows:

"For the purpose of this section in case a person has been convicted one or more times prior to the 13th day of July 1929 of a violation of the provisions of