

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1965 - 1966

an electrical installation unless satisfied that the person applying for the permit complies with this chapter.'

The former 32 M.R.S.A. § 1103 provided:

' §1103. Provisions in city charters not affected.

This chapter shall not prevent the licensing of electricians licensed hereunder by cities under the charters or ordinances thereof.'

A municipality has been requiring electricians licensed under 32 M.R.S.A. § 1103 to record their State electricians' licenses and charges a recording fee for doing so. Another municipality is still charging a \$10.00 electrician's licensing fee.

QUESTION:

Can municipalities require State licensed electricians to pay such recording fees or local license fees?

ANSWER:

No.

OPINION:

The intent of 32 M.R.S.A. § 1103 as amended, is crystal clear, municipalities may not issue an electrician's license nor may they charge a fee for same. The use of a recording fee for an electrician's license is in effect the issuance of a license by a municipality as it requires the electrician to pay a fee to the municipality for a license issued. Neither of the practices set forth in the facts are proper or legal under 32 M.R.S.A. § 1103 as amended.

It should be noted that municipalities still have the authority to issue permits for electrical installations. 32 M.R.S.A. § 1103 does not prevent the charging of a fee for such a permit issued by a municipality.

JEROME S. MATUS
Assistant Attorney General

April 1, 1966
Education

Kermit S. Nickerson, Deputy Commissioner

Creation of Expenditure by Administrative Unit Re State Construction Subsidy.

FACTS:

The Maine Laws relating to public schools provide, inter alia, for the payment of State subsidy to administrative units on the basis of the unit's expenditures for capital outlay purposes.

" * * * On the basis of all the reports filed in the office of the commissioner on November 1st of each year, the commissioner shall determine the total amount to be paid to all of the School Administrative Districts and other eligible administrative units in that year, for capital outlay purposes, and shall apportion out of moneys appropriated for this purpose, in December of that year, to the

School Administrative Districts and other eligible administrative units, the same percentage of each administrative unit's expenditures for capital outlay purposes including principal and interest payments * * * ." 20 M.R.S.A. § 3518.

This office has previously determined, by formal opinion, that the 12-month period ending November 1 constitutes the period within which an eligible unit's expenditures must have been realized in order for the unit to qualify for assistance in the following month of December, i.e., November 1 is the cut-off date. (Opinion dated November 25, 1958.)

Certain eligible local administrative units have sold bond issues which provide for interest payments or the redemption of bonds on dates occurring after the said November 1 cutoff date. In some instances, the interest payments or the redemption of bonds occurs shortly after the November 1 date. The interest and redemption dates specified on the bonds are the dates on which the interest payments are available to the bond holders. Because most of the bonds are in unregistered coupon form, payment to bond holders is not made by the paying agent until coupons or matured bonds are presented to the agent. In certain instances, bond indentures require the particular local administrative unit to make a deposit of money with the paying agency at some point prior to the coupon and maturity dates; the deposit being the amount required to meet the forthcoming bond interest payments or bond redemptions.

In some instances, local administrative units, with debt service commitments occurring shortly after the November 1 cutoff point, appear to be expediting the deposit of the sums required for interest and retirement commitments. By this procedure, the administrative units records seemingly reflect a disbursement of debt service monies to their paying agents prior to November 1 so as to be in a position to contend that a capital outlay expenditure occurred prior to the cutoff date. Resort to this procedure means that the administrative unit will realize State subsidy sooner than the unit would receive subsidy were its expenditure made after the cutoff date.

Whether required or made on a voluntary basis, these deposits are held by the paying agent, in the credit of the local administrative unit until the coupon or redemption date of record arrives. At that time, and not before, the deposits are made available to the bond holders.

QUESTION:

Does an administrative unit incur an expenditure for capital outlay purposes when it deposits debt service monies with its paying agent prior to November 1 to be used by the agent after November 1 for the purpose of meeting bond interest and retirement commitments?

ANSWER:

No.

REASON:

The word "expenditure" has been defined as the spending of money; the act of expending; disbursement expense; money expended; a laying out of money; a payment. *Crow v. Board of Sup'rs. of Stanislaus County*, 135 Cal. App. 451, 27 p. 2d 655; *Shurzberg v. City of Bayonne*, 29 N.J. 106, 148 A. 2d 171; *In re Toler's Estate* 49 C. 2d 460, 319 P. 2d 337. Unless, then, the given facts reveal that an administrative unit is spending money, laying out money, etc., no expenditure will have been made prior to the cutoff date.

We note that the facts are such that the administrative unit transfers the monies to *its* paying agent, and that the agent holds the monies to the credit of the administrative unit until disbursement is required. Payment by a principal to his agent of monies to be held by the agent until called for by third persons does not appear to constitute payment to the third persons until actually relinquished by the agent. Until the agent becomes divested of the monies, the same cannot be said to be expended by the principals. See: 2 *C.J.S., Agency*, § 1. et seq. for a discussion of agency principles.

JOHN W. BENOIT
Assistant Attorney General

Maynard F. Marsh, Chief Warden

April 4, 1966
Inland Fisheries and Game

Jurisdiction of District Court over Migratory Bird Treaty Act.

QUESTION:

Does the Maine District Court have jurisdiction in cases which involve violations of regulations adopted and approved pursuant to the Federal Migratory Bird Treaty Act as provided in 12 M.R.S.A. § 2352?

ANSWER:

No.

LAW:

"Determination as to when and how migratory birds may be taken, killed or possessed.

"Subject to the provisions and in order to carry out the purposes of the conventions, referred to in Section 707 of this title, the Secretary of the Interior is authorized, and directed, from time to time. . . . to make suitable regulations, permitting and governing hunting. . . , which regulations shall become effective when approved by the President. . . ." 16 *U.S.C.A.*, § 704.

" . . . The several judges of the courts established under the laws of the United States, and United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. All birds, or parts, nests, or eggs thereof, captured, killed, taken, shipped, transported, carried, or possessed contrary to the provisions of said sections or of any regulations made pursuant thereto shall, when found, be seized by any such employee, or by any marshal or deputy marshal, and, upon conviction of the offender or upon judgment of a court of the United States that the same were captured, killed, taken, shipped, transported, carried, or possessed contrary to the provisions of said sections or of any regulation made pursuant thereto, shall be forfeited to the United States and disposed of as directed by the court having jurisdiction. July 3, 1918, c. 128, § 5, 40 Stat. 756; 1939 Reorg. Plan No. II, § 4, (f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433." 16 *U.S.C.A.* § 706.

"Nothing in sections 703-711 of this title shall be construed to prevent the several States and Territories from making or enforcing laws or regulations not