

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1965 - 1966

May 17, 1966
Treasury

Eben L. Elwell, State Treasurer

Use of Temporary Loans for Highway Purposes

FACTS:

The Ninety-Ninth and One Hundredth Legislatures proposed bond issues for highway and bridge purposes. Both bond issues were duly approved by the electorate at special elections in 1959 and 1961.

The Highway Commission now foresees the need of additional revenue in the next fiscal year. In accordance with 23 M.R.S.A. § 1551 - 1552, the Economic Advisory Board has met and considered the advisability of issuing Highway Bonds on July 15, 1966.

The bond market is at a very high point at present. Therefore, the Board has considered the possibility of recommending to the Governor and Executive Council the use of temporary loans for highway purposes as provided in 5 M.R.S.A. § 150. Under this plan, issuance of bonds would be deferred until market conditions improve. In the meantime temporary loans would be made and repaid prior to June 30, 1967, by issuance of the bonds.

QUESTION:

Would there be any legal problems involved in the use of temporary financing for highway construction and the subsequent issuance of long term bonds with the proceeds from the sale of such bonds to be used to repay said temporary financing?

ANSWER:

See opinion for answer.

OPINION:

The question, as worded, cannot be answered with a categorical "Yes" or "No." The general procedure of using temporary loans and repaying them by a bond issue would appear to be legal. 5 M.R.S.A. § 150, provides by the last two sentences:

"The Treasurer of State is authorized, in any fiscal year in which the Governor and Council deem it necessary, to negotiate a temporary loan or loans for the use of the State Highway Commission for highway purposes. The said loan or loans shall not exceed 1/3 of the highway revenue received during the previous fiscal year and shall be repaid within the same fiscal year out of revenue credited to the General Highway Fund during that fiscal year."

This means that the limit of temporary loans is 1/3 of the highway revenue received from July 1, 1965 to June 30, 1966. That figure cannot be determined until, at least, July 1, 1966. Payment of the temporary loans must be made on or before June 30, 1967. These two limitations upon temporary loans are absolute and must be met.

If the temporary loans are made on an "as needed" basis and repaid when the bonds are issued, no legal problems can be foreseen. However, if one temporary loan payable on June 30, 1967 is made, then a legal problem may well arise.

In 1943 the Ninety-First Legislature sought to enact a bill authorizing the issuance of bonds to refund outstanding bonds maturing or subject to redemption before June 30, 1947. The House asked the Supreme Judicial Court if this bill was constitutional.

Opinion of the Justices, 139 Me. 416, said:

“Unless otherwise expressly prohibited, the Legislature has the power to authorize the refunding of valid outstanding obligations of the State but the issuance of bonds for that purpose an unreasonable length of time before the maturity of the indebtedness for the avowed and inseparable purpose of establishing an interim investment fund for gain and profit as is authorized by H.P. 1069, L.D. 558, pending in the 91st Legislature of Maine, will create a new debt or liability on behalf of the State in violation of the Provisions of Section 14 of Article IX of the Constitution of Maine as amended. We answer this question in the negative.”

The Court did not expound on its reasons or theory as to why the law was unconstitutional other than its flat statement that the bill “will create a new debt or liability. . . . in violation of the provisions of Section 14, Article 9 of the Constitution of Maine.”

If the Governor and Council should authorize a temporary loan payable on June 30, 1967 and subsequently during the fiscal year authorizes the issuance of bonds, it would be reasonable to assume that one of the purposes for such an action would be to invest the funds for gain and profit. We recognize that any method of issuing a temporary loan and subsequently issuing bonds will create a situation where for a short period of time both the loan and the bond issue may be outstanding. This cannot be avoided. However, the issuance of a temporary loan with a definite date payable can be avoided, and any taint of unconstitutionality can be avoided.

The insertion of a mandatory call date in the temporary loan which would require payment of the temporary loan within a reasonably short time after the issuance of the bonds would be one method of accomplishing this.

This dual indebtedness is the only feature of the suggestion by the Economic Advisory Board which might have legal complications. At least this office cannot see any other legal problems.

GEORGE C. WEST
Deputy Attorney General

June 24, 1966
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

Taxation of Municipal Sewer Facilities Located in Another Town

FACTS:

The town of Norway has constructed a sewage system located in part within the adjoining town of Paris.

The system was constructed prior to the enactment of Title 30, Chapter 235, which provides for the financing of sewage facilities through the issuance of revenue bonds. No information is available as to whether the system is revenue-producing.

The town of Paris now seeks to levy property taxes against that portion of the sewage system located within its limits.

QUESTION:

The general question is: