

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1965 - 1966

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:

Whether the town of Paris can levy property taxes against that portion of the sewage owned by the town of Norway but located in the town of Paris.

The specific questions are:

1. Is the effect of section 4262 of Title 30 to exempt from taxation the property of *any* municipal sewage system, revenue-producing or not, whether located within the limits of the municipality or not?

Answer: No.

2. If the answer to the first question is “no,” is the effect of the section to exempt from taxation revenue-producing sewer facilities of a municipality, wherever located, regardless of whether the facilities were acquired prior to enactment of Chapter 235 of Title 30, and regardless of whether the facilities were procured through the issuance of revenue bonds?

Answer: No.

3. If the answer to both above questions is “no,” is the Bureau of Taxation justified in concluding that section 4262 of Title 30 applies only to such facilities acquired or constructed through issuance of revenue bonds, and acquired or constructed subsequent to enactment of what is now Chapter 235 of Title 30, in 1963?

Answer: Yes.

LAW:

Title 30, M.R.S.A. § 4251 entitled “Sewage Disposal Systems” authorizes municipalities to “acquire, construct. . . maintain and operate. . .” revenue-producing water or sewage facilities within, without or partly within or without the corporate limits of the municipality.

The facilities are to be constructed by the issuance of revenue bonds. (Title 30 M.R.S.A. § 4252).

Section 4262 of Title 30 provides that the revenue-producing facilities shall be exempt from taxation wherever located.

Previous to the enactment of the above provisions public municipal corporations could construct such facilities only by way of appropriation. (See Chapter 96, sections 129-150 inclusive, 1954 Revised Statutes of Maine, now Title 30 M.R.S.A. § 4351-4361 inclusive).

Too, previous to the enactment of the above exemption provision the only exemption provision for similar facilities was contained in what is now Title 36 M.R.S.A. § 651 (1) (D) which exempted certain public property as follows:

“The property of any public municipal corporation of this State appropriated to public uses, *if located within the corporate limits and confines of such public municipal corporation.*” (Emphasis supplied).

REASONS:

Question 1: *Is the effect of section 4262 of Title 30 to exempt from taxation the property of any municipal sewage facility, revenue-producing or not, whether located within the limits of the municipality or not?*

This question is answered in the negative.

Section 4262 which relates to the exemption of municipal facilities of sewage disposal systems conditions its operation upon the facilities being "revenue-producing." Too, it relates the exemption provision to those facilities constructed or acquired under the provisions of Chapter 235 cited above.

Therefore a facility must be a "revenue-producing" facility within the contemplation of Chapter 235 in order that its property, wherever located, be exempt from taxation.

Question 2: *If the answer to the first question is "no," is the effect of the section to exempt from taxation revenue-producing sewer facilities of a municipality, wherever located, regardless of whether the facilities were acquired prior to enactment of Chapter 235 of Title 30, and regardless of whether the facilities were procured through the issuance of revenue bonds?*

The answer to this question is in the negative.

A. The section exempts revenue-producing sewer facilities constructed under Chapter 235.

Section 4262 which provides an exemption for taxation of revenue-producing municipal facilities is limited, in its operation, at least in part, to those revenue-producing facilities which have been acquired or constructed under Chapter 235 of Title 30. There is a legislative finding of fact in section 4262 indicating that municipal facilities acquired or constructed under this Chapter (235) constitute public property and are used for municipal purposes. The exemption is further extended to those portions of the facility which are located without the corporate limits of the municipality.

Therefore it is proper to conclude that revenue-producing sewer facilities of a municipality which have been acquired or constructed under the provisions of section 4262 are exempt from taxation wherever located.

B. In order to be exempt the facilities must be procured through the issuance of revenue bonds.

Chapter 235 is limited in its application to those revenue-producing sewer facilities which have been constructed by the issuance of revenue bonds since elaborate provision is made for the financing of the facilities in this fashion under the provisions of the chapter.

Too, the provision formerly contained in Chapter 96 of the 1954 Revised Statutes is still existent in Title 30 at section 4351 through 4361 contemplating the construction of sewage facilities by a town by means of appropriation. This indicates that the Legislature was aware that previously the town could not issue revenue-producing bonds to create a sewage district and that it intended chapter 235 to operate to cure this defect. Therefore, it is important for the operation of the chapter that revenue-producing bonds be issued.

C. The exemption in section 4262 does not apply where the facilities were constructed prior to the enactment of Chapter 235.

Presumably, since the facts indicate that the facility in question was constructed prior to 1963, when Chapter 235 was enacted, the sewage facilities of the town of Norway were constructed under the authority found in Revised Statutes of 1954, Chapter 96, sections 129 through 150, inclusive. (Now Title 30 M.R.S.A. § 4351-4361). Under these provisions exemption from taxation of such facilities was dependent upon whether the facilities came within the tax-exemption provisions of Title 36 M.R.S.A. § 651. This provision exempted in part, the property of any public municipal corporation which is appropriated to public uses, if the property was located within the corporate limits and confines of such public municipal corporation.

While a facility constructed under the provisions of Chapter 235 may as well be as

devoted to a public use as is one constructed under the provisions of Revised Statutes 1954, Chapter 96, section 129 through 150 inclusive, it appears that the provision extending the tax exemption for such sewage facilities is only attributable to those facilities acquired or constructed under the provisions of Chapter 235 as explained above.

Therefore, in answer to your question No. 3 you are justified in concluding that section 4262 of Title 30 applies only to such sewage facilities acquired or constructed through issuance of revenue bonds, and acquired or constructed subsequent to enactment of what is now Chapter 235 of Title 30.

Therefore, under the present statutes (Title 36 M.R.S.A. § 6517, sub. D), the facilities in question are taxable by the town of Paris since they are located without the corporate limits of the town of Norway.

JON R. DOYLE
Assistant Attorney General

June 29, 1966
Education

Kermit S. Nickerson, Deputy Commissioner

Regional Technical and Vocational Centers; Exceeding Amount of Appropriation

FACTS:

In 1965, the Legislature enacted legislation providing for the establishment and operation of regional technical and vocational centers, *P. L. 1965, c. 440*. Section 4 of the reference Act contains the following language re appropriation of moneys:

“Sec. 4. Appropriation. In order to carry out the purposes of this Act, there is appropriated out of any moneys in the General Fund not otherwise appropriated in the sum of \$210,000 for the fiscal year ending June 30, 1967. * * *”

The total number of applications filed with the State Board of Education pursuant to the provisions of the subject Act (20 M.R.S.A. § 2356-A to 2356-H) would, if approved, exceed the amount of \$210,000 by a sizable sum. Your memorandum recites that approval of the present applications together with expected additional applications would increase the State's involvement and would obligate future legislatures to raise additional appropriations of considerable size.

QUESTION:

Does the State Board of Education possess authority to approve applications for the reference regional technical and vocational centers although to do so means that future State aid would exceed the appropriated sum of \$210,000?

ANSWER:

Yes.

REASON:

An administrative unit seeking to offer a program of technical and vocational

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STATE OF MAINE

Inter-Departmental Memorandum Date May 18, 1966

To Jon R. Doyle, Assistant Attorney General

Dept. Bureau of Taxation

From Ernest H. Johnson, State Tax Assessor

Dept. Bureau of Taxation

Subject Taxation of municipal sewer facilities located in another town

We have had an inquiry from the town of Paris as to whether it can levy property taxes against a settling basin and sewer lines owned by the town of Norway but located in the town of Paris.

Paragraph D of subsection 1 of section 651 of Title 36 exempts from property taxes the property of public municipal corporations appropriated to public uses, if located within the limits of such public municipal corporations. Paragraph E of the same subsection exempts from property taxation certain water facilities owned by public municipal corporations, even though located outside the limits of the public municipal corporation.

I find nothing else in Title 36 bearing on the question; and on the basis of these provisions it would seem that the property in question ~~was~~ taxable by the town of Paris.

However, Chapter 235 of Title 30 of the Revised Statutes, entitled "Sewage Disposal Systems," authorizes municipalities to acquire revenue-producing water and sewer systems, to finance them by the issuance of revenue bonds, and further provides that such facilities, wherever located, are exempt from property taxation. Subsection 1 of section 4251 of that chapter states that a municipality is authorized and empowered "to acquire, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any revenue-producing municipal facility consisting of a water system or part thereof or a sewer system or part thereof within or without or partly/and partly without the corporate limits of the municipality. . . ."

Section 4262 of the same chapter states "As proper revenue-producing municipal facilities as defined are essential for the health of the inhabitants of the municipalities, and as the exercise of the powers conferred to effect such purposes constitute the performance of essential municipal functions, and as municipal facilities acquired or constructed under this chapter, constitute public property and are used for municipal purposes, no municipality shall be required to pay any taxes or assessments upon any such system or any part thereof, whether located within or without the corporate limits of the municipality,"

We do not know whether the sewer system in question is revenue-producing or not. We understand that the system was not constructed through issuance of revenue bonds; and that it was constructed prior to enactment of Chapter 235 of Title 30 in 1963.

In order that we may answer the inquiry from the town of Paris, would you please advise as to the following questions:

1. Is the effect of section 4262 of Title 30 to exempt from taxation the property of any municipal sewage system, revenue-producing or not, whether located within the limits of the municipality or not?

2. If the answer to the first question is "no," is the effect of the section to exempt from taxation revenue-producing sewer facilities of a municipality, wherever located, regardless of whether the facilities were acquired prior to enactment of Chapter 235 of Title 30, and regardless of whether the facilities were procured through the issuance of revenue bonds?

3. If the answer to both above questions is "no," are we justified in concluding that section 4262 of Title 30 applies only to such facilities acquired or constructed through issuance of revenue bonds, and acquired or constructed subsequent to enactment of what is now Chapter 235 of Title 30, in 1963?

If the latter is the case, I would conclude that under present statutes the facilities in question are taxable by the town of Paris.

BHJ:j