

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

Anyone familiar with water courses, such as the Allagash, knows that the shore line for long distances may be nothing but flowage grass, swamp or other land of such character as to be economically valueless. Without reasonable knowledge of mineral formations including ores, sand and gravel in each township, the Forest Commissioner could be derelict in his duty if he simply laid off the public lots in strips 400 to 800 feet wide along water courses.

In my opinion, the Forest Commissioner not only ought not, but must not, ignore the quality, situation and value of the land when laying out public lots. This is particularly important when one remembers that the timber and grass rights were long ago sold to the land owners.

JAMES S. ERWIN
Attorney General

February 15, 1967

Honorable E. Perrin Edmunds
Chairman, Executive Council
State House
Augusta, Maine

Dear Mr. Edmunds:

I acknowledge receipt of your letter bearing today's date requesting an answer to the question posed therein.

You asked:

"Can the Governor and Council authorize the issuance of bonds in anticipation of their ultimate need for the purpose of reinvesting the proceeds of those bonds at a higher rate of interest to earn money for the General Fund?"

The answer must be in the negative and will need a certain amount of explanation. By an Opinion of the Justices, 139 Maine 416, the Supreme Judicial Court in 1943 ruled on this same question. The Court said among other things:

"Unless otherwise explicitly 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 . . . 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.*" (Emphasis supplied.)

I think that this Opinion of the Justices clearly prohibits the procedure outlined in your question. The operative words are "an unreasonable time." I will not attempt to define a standard of reasonableness, but it would seem very clear to me that borrowing money by issuing authorized bonds in anticipation of a future need at a time not yet clearly determinable, would be unreasonable and the investing of the proceeds of such an issue at a higher rate of interest would fall under the ban of the Opinion of the Justices.

The standard of a reasonable time is inexact enough to create doubt in all but the clearest of circumstances. It is my opinion that whenever such a doubt may exist, the problem should be avoided by not borrowing the money. This does not mean that State funds may not be temporarily invested in short-term U. S. Government obligations. In fact, there could well be times when an obligation could exist so to invest idle funds. The ban is clearly upon the borrowing in anticipation of need for the purpose of reinvesting at a profit.

It appears that almost every bond issue authorizes the issuance of the bonds in question "from time to time." The reason is, of course, to take the guesswork out of anticipated need and to allow the Governor and Council to keep more current with the bond market and avoid long-term anticipated borrowing. It bears the fair implication that speculation as to high or low bond rates should be avoided.

By inter-departmental memorandum dated May 17, 1966, Deputy Attorney General George West gave an opinion to State Treasurer Eben L. Elwell concerning the validity of temporary loans. I concur with that opinion which is attached to this letter. The subject of the inquiry is in the same general area, but is not specifically on the point of your instant question.

Very truly yours,

JAMES S. ERWIN
Attorney General

March 7, 1967
Parks and Recreation

Lawrence Stuart, Director

Title to Accrued Land Areas at Drake's Island in Wells, Maine.

FACTS:

Certain beach areas on Drake's Island at Wells, Maine have accreted as a result of the construction of jetties by the United States Army Corps of Engineers.

QUESTION NO. 1:

Does the title to the accreted beach areas vest in the property owners whose deeds run to the ocean or does the title vest in the State of Maine?

QUESTION NO. 2:

Should a declaratory judgment be sought to ascertain title to the accrued beach areas?

ANSWERS:

See opinion.

OPINION:

"Rights in respect of additions to or conditions of land by accretion or reliction are governed, ordinarily, by the law of the State in which accretion or reliction occurs." 56 *Am. Jur.* p. 897, *Waters*, § 482, and cases and annotations cited. Footnote 16.

We look to the law of the State of Maine and find three cases dealing with accretion. None of the three cases deal with accumulation of land brought about by artificial conditions, i.e., jetties, dams. *State v. Yates*, 104 Me. 360 (1908) dealt with the