

# MAINE STATE LEGISLATURE

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March 20, 1967

Austin H. Wilkins, Commissioner

Forestry

James S. Erwin, Attorney General

Attorney General

L.D. 43 AN ACT Appropriating Moneys for Spruce Bud Worm Control

This letter is in response to yours of March 17, 1967 in which you asked my legal opinion with regard to the Legislature appropriating money from the General Fund to be expended under your direction and control to contain and hopefully eradicate a severe outbreak of spruce bud worm located in the vicinity of Oxbow in northern Maine. In your letter you disclosed to me that the moneys proposed to be appropriated by the above bill would, in conjunction with moneys made available by additional assessments in the Forestry District Tax for the year 1967, and Federal matching funds, be used to contract for pilots and planes and the purchase of materials and supplies to carry out the spraying. You also stated that some of the property to be sprayed included areas in which there were public reserve lots which come under your direction and control and that in some of the area the State had undivided interests in townships which had never been set off. You also forwarded to me a sketch showing the area to be sprayed and noted that it was only some 14 miles from the northeast corner of Baxter State Park where the State has undertaken a specific trust to preserve in its natural state and it is only some 28 miles from the head of the Allagash Wilderness Waterway which the last Legislature set up to be preserved as a public wilderness watercourse for the benefit of the people of the State.

The question you asked is whether or not the expenditure of the funds appropriated under L.D. 43 is an expenditure for a public purpose. In my opinion such expenditure is for a public purpose and is not for a private purpose. In the first instance, there is no problem with regard to the moneys made available by the Maine Forestry District. The Forestry District was held to be constitutional despite a broadside attack levied in Sandy River Plantation vs. Lewis, 109 Me. 47, (1912). The court held that a tax could be levied in the unorganized territory for a special and peculiar benefit of the wild-land owners. At the outset the problem was one of fire and in this more modern age it has been from pestilence, and the Forestry District has been authorized to raise additional funds for pest control over the years. As a matter of fact, as you point out, moneys have been made available from all three sources to battle the spruce bud worm in the following years; 1954, 1958, 1960 and 1961, 1963 and 1964. During this period of time out of a total of a little over \$1,000,000 spent from all sources, approximately

\$400,000 has come from the Forestry District, approximately  
\$400,000 has come from the General Fund of the State and approximately  
\$275,000 has come from Federal matching funds.

Turning now to the question of the use of state funds. Of fairly recent date many taxes that have been levied for particular purposes have been attacked as really being taxes that are levied not in the public interest but in the interest of a few. Thus, we find the Potato Tax under attack in the State vs. Vahlsing, 147 Me. 417 (1952), the Quahog Tax came under attack in State vs. Laskey, 156 Me. 419 (1960) and the Sardine Tax in State vs. Stinson Canning Co., 161 Me. 320 (1965). In each instance the tax was levied upon a particular industry and spent for the benefit of that industry. Our court has consistently held that where the money was expended by public officials even though it benefited a particular industry, as distinguishing from everyone else, that this was still a tax levied for a public purpose because a benefit to a part of Maine's economy and will be a benefit to all.

The test is set forth in State v. Stinson Canning Co. supra,

"Whenever it is apparent from the scope of the Act that its object is for the benefit of the public, and that the means by which the benefit is to be attained are of a public character, the Act will be upheld even though incidental advantage may accrue to individuals beyond those enjoyed by the general public."

Our court has held that it is within a prerogative of the Legislature exercising the police power to prohibit the cutting of timber below certain sizes in unorganized territories in order to preserve the timber and the land for the best interests of the state. This they said could be done without paying compensation to the landowner who wished to cut the timber but could not do so. Opinion of the Justices, 103 Me. 506 (1907).

It has been held that it is perfectly proper to compel a person to remove a diseased tree from his property because that tree might spread a disease to his neighbor and from his neighbor on to the next person. This can be done under the police power without paying compensation for the person's tree provided that proper procedural safeguards are present. See Bowman vs. Virginia State Entomologist, Va. ; 105 S.E. 141; 12 A.L.R. 1121 (1920). It seems logical, therefore, that if the State can compel a resident not to cut a tree without compensation in order to preserve it and the land for future use and growth, and to cut down a tree which is

diseased so that the pestilence therefrom cannot go on a neighbor's land and ruin his trees and thus infect all the trees, that it is within the proper scope of legislative authority to take money from the General Fund, the source of which is all the taxes levied in the State, and expend it in order to prevent the spruce bud worm from not only destroying the trees in the Oxbow area but also to prevent the spread of the worms throughout the state.

We need not rely on logic alone, there is authority for the spending of public money for forestry purposes in other states. I cite to you Opinion of the Justices, 84 N.H. 559; 149 At. 321 (1930) at 331 where the Supreme Court of New Hampshire in responding to an inquiry from the Legislature of the State said it was perfectly proper to appropriate state money for the preservation of forest lands. See also Forest Conservation Acts-Validity, 13 ALR 2d, 1095 at 1107.

To answer your specific question, it is my opinion that the money appropriated by L.D. 43, AN ACT Appropriating Moneys for Spruce Bud Worm Control will be expended for a public and not for a private purpose, and it is well within the prerogative of the Legislature to make such an appropriation.

(H)

James S. Erwin  
Attorney General