

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

7 M.R.S.A. § 956 provides in part as follows:

“The commissioner shall diligently enforce all of the provisions of sections 951 to 957. He, either in person or by a duly authorized representative, shall have free access, ingress and egress to any place or any building, boat, truck, trailer, or *railroad car*, warehouse, *depot*, *station*, packing house, boat dock, or any building wherein potatoes are packed, stored, transported, sold, offered or exposed for sale or for transportation. He may also, in person, or by duly authorized representative, open any container and may, upon tendering market price, take samples therefrom. * * * .” (Emphasis supplied.)

You will note that this authorizes you or your duly authorized representative to have free access to the above places wherein potatoes are packed, stored, transported, sold, offered or exposed for sale or for transportation.

A reference to 7 M.R.S.A. § 950 indicates that potatoes packed in any type or kind of container and found in a depot, station, railroad car, and other locations are deemed to be exposed for sale. The first paragraph of this section reads as follows:

“1. Expose for sale. Potatoes packed in any type or kind of container, and found in any place in the State of Maine, whether that place shall be a depot, station, warehouse, packing house, boat dock or any place where potatoes are held in storage, or loaded on a boat, truck, trailer, or railroad car or motor vehicle, shall be deemed to be exposed for sale under this subchapter.”

It is the opinion of this office that section 956 gives you, or your duly authorized representatives, full authority to inspect potatoes in the railroad cars at Northern Maine Junction. Section 954-A authorizes you to seize any potatoes if the containers bear any statements, design or device which shall be false or misleading or if the potatoes are packed in such manner that the face or shown surface is not an average of the contents of the package or if such potatoes fail to meet the minimum grade requirements established as a state grade by you or if the potatoes are not accompanied by a proper bill of lading or invoice. You may hold the potatoes in accordance with this section until they have been regraded or relabeled and accompanied by a Federal-State inspection certificate showing that the potatoes in such containers conform in every particular to the markings on such containers or until a proper bill of lading or invoice is produced.

It is the opinion of this office that you have adequate authority to inspect these potatoes.

Very truly yours,

GEORGE C. WEST
Deputy Attorney General

June 6, 1968

Honorable Raymond M. Rideout, Jr.
Manchester
Maine

Dear Mr. Rideout:

SYLLABUS:

An allotment covers anticipated expenditures of funds made available to a department or agency during one fiscal year. An allotment may be encumbered even though the contract is for an amount greater than the allotment. It is not necessary to

have funds available for the full amount of the contract when the allotment is encumbered.

FACTS:

The 102nd Legislature approved a bond issue and the people ratified the same for the purpose of constructing a cultural building. A small amount of the bonds have been issued to finance preliminary work. It is expected that a contract will be signed in the early fall for an amount in the vicinity of \$4,000,000. The building will not be completed until 1970. Payments on the contract will be made monthly as the building progresses. Final payment will be made after completion of the building.

Controversy has arisen concerning the issuing of bonds. The State Treasurer does not want to issue the whole amount of the authorized bonds at this time. The Commissioner of Finance and Administration believes that in order to have the Governor and Council allot the bond issue and the Controller encumber the funds, that the actual money must be in the State's hands.

QUESTION:

Does the law condition the right of a State department or agency to contract (with proper approval) upon there being at the time of execution, money in amount sufficient to fund the entire obligation that may accrue under the contract?

ANSWER:

No.

REASONS:

The first step in the procedure which we are called upon to study is the "allotment". (It is not necessary to trace the steps by which a bond issue becomes a law. We can say that P. & S. L. 1965, c. 259, has been ratified by the people.)

5 M.R.S.A. §1667 provides in part:

"Not later than June 1st of each year, the Governor shall require the head of each department and agency of the State Government to submit to the Bureau of the Budget a work program for the ensuing fiscal year. Such work program shall include all appropriations, revenues, transfers and *other funds*, made available to said department or agency for its operation and maintenance and for the acquisition of property, and it shall show the requested *allotments* of said sums by quarters *for the entire fiscal year*, classified to show allotments requested for specific amounts for personal services, capital expenditures and amounts for all other departmental expenses. The Governor and Council . . . shall review the requested allotment with respect to the work program . . . before approving the same. The aggregate of such allotments shall not exceed the total sums made available to said department or agency *for the fiscal year* in question." (Emphasis supplied)

Thus we see that a department having funds available to it must have such funds allotted to it by the Governor and Council before the department may spend the funds. However, we also note that the Governor and Council may make allotments for "the entire fiscal year." Also, the total allotment shall not exceed "the total sums made

available to said department or agency for the fiscal year in question.” The statute thus restricts the Governor and Council to making allotments to not more than one full fiscal year. Does this mean that when a bond issue has been authorized, the Governor and Council may not allot beyond “the entire fiscal year”? We must answer in the affirmative. The Governor and Council may only allot so much of a bond issue as is estimated will be used in one fiscal year.

We should here indicate that the words “appropriations, revenues, transfers and other funds” are not synonymous with “cash” or “money”. The words actually mean “credits” given to the various departments or agencies by enactment of laws in the manner prescribed by the Constitution.

We next need to look at the word “encumbrance” and its effect. We refer you to an opinion of this office dated July 10, 1953, addressed to Raymond C. Mudge, Commissioner of Finance and Administration. (Copy attached.) In this opinion are the following statements:

“An encumbrance exists when there is such a charge or liability, arising from negotiations, that there results, on the part of the State or one of its departments or agencies, an obligation to pay a sum of money for a particular purpose.

“The term ‘encumbrance’ has a particular meaning when used in governmental accounting. See ‘A Dictionary for Accountants’, Kohler, where encumbrance is defined as:

“ ‘A proposed expenditure, evidenced by a contract or purchase order, or determined by administrative action.’ ”

Although the statutes do not specifically so state in so many words, it is the Controller’s duty to encumber funds. This is impliedly stated in 5 M.R.S.A. §1541, sub. 2.

So we now know that when “funds (are) made available” to departments or agencies they must first be allotted. Once allotted, they may be encumbered by the Controller. An encumbrance depends upon an allotment. Therefore, where an allotment may not extend beyond an “entire fiscal year” the Controller may not encumber beyond the allotment.

Under the given facts, the Governor and Council may only allot funds from the authorized bond issue for the fiscal year ending June 30, 1969. When a contract properly executed and approved is presented to the Controller, he can only encumber such funds as are allotted.

Hence, it follows that it is not necessary to the execution and approval of a contract that there be money in amount sufficient to fund the entire obligation.

In addition, it might be well to mention another opinion of this office dated December 4, 1951, addressed to the Commissioner of Finance and Treasurer of State. That opinion noted the *Opinion of the Justices*, 139 Maine 416, at 419, and concluded that “the issuance of bonds an unreasonable length of time before the maturity of indebtedness for the avowed reason . . . to establish an investment fund for gain and profit, will create a new debt or liability” in violation of Section 14, Article IX of the Constitution.

GEORGE C. WEST
Deputy Attorney General