STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

2. Yes, provided the program meets the criteria of 20 M.R.S.A. §3115 (Supp. 1968).

REASONS:

1. 20 M.R.S.A. §3111 (1964), as noted earlier, states that the purpose of the entire chapter on education of physically handicapped or exceptional children is to "provide educational facilities, services and equipment for all (such) children below 21 years of age . . . ". We conclude that if the children meet the standards of §3111 and §3112, their age (as long as it is below 21) is immaterial. Therefore, the commissioner has jurisdiction to promulgate rules and regulations to properly administer the statute as it applies to such children, no matter what their age.

2. Appropriations made under the statute are to be paid according to 20 M.R.S.A. § 3115 (Supp. 1968). This statute is self-explanatory, and provides, *inter alia,* that subsidies are to be paid to designees of the commissioner for special-education programs approved by the state board. The age limitations of 20 M.R.S.A. § 859 (1964) are immaterial for the reasons advanced in support of Answer No. 1, *supra.*

ROBERT G. FULLER, JR.
Assistant Attorney General

November 7, 1968
Federal-State Coordinator

Walter E. Corey, III

Foreign-Trade Zones Enabling Act

SYLLABUS:

The portion of the Maine Foreign-Trade Zones Enabling Act, Me. Priv. & Spec. Laws 1963, ch. 178, which prohibits consignors or consignees of goods within the zone from owning warehouses therein, does not apply to an oil company, which proposes to erect storage tanks in the zone for storage of its own oil.

FACTS:

The Maine Port Authority proposes to establish a special-purpose foreign-trade sub-zone at Machiasport, Maine. An oil company has expressed interest in leasing space in the sub-zone and erecting storage tanks to be used for storage of such company's crude oil pending refining, and for its refined products pending sale.

The next-to-last sentence of the Foreign-Trade Zones Enabling Act reads: "The warehouse in which said goods, wares or merchandise are stored shall not be owned, either in whole or in part, by either the consignee or the consignor."

QUESTION:

Would the proposed activities of the oil company in the sub-zone violate the cited provisions of the Act?

ANSWER:

ANSWER:

No.

OPINION:

An oil storage tank is not a "warehouse" within the meaning of the Act. The term "warehouse" is elastic and its definition depends on the context in which the term is used. See generally 93 C.J.S. *Warehousemen & Safe Depositaries* 1(b); cf. *Owen v. Boyle,* 11 Me. 47, 60 (1842). In the context of the Act, it appears that the term was intended to embrace facilities where goods are received for storage upon a fee. The thrust of the cited language of the Act is to ensure that facilities of this type will in fact be owned and operated by independent warehousemen and not by the consignee or consignor of the goods. Since the oil storage tanks are not intended to be used for the storage of the oil of others at a price, but solely for the storage of the owning company's products, they are not "warehouses" which the Act protects.

ROBERT G. FULLER, JR.
Assistant Attorney General

December 12, 1968
Governor's Committee on
Pollution Abatement

Thomas Griffin, Chairman

Use of funds, derived from bond issue, for certain preconstruction costs of municipal and quasi-municipal pollution abatement construction programs.

SYLLABUS:

Detailed planning and engineering costs, which are incurred after a municipality or quasi-municipal corporation has made the decision to construct a pollution abatement facility, and which are an essential prerequisite to actual construction (as opposed to costs of pilot plans, feasibility studies, cost estimates and the like) are part of the "construction program" for which the Water and Air Environmental Improvement Commission may, acting under and within the limitations of 38 M.R.S.A. §411 (Supp. 1968), properly make grants, to the appropriate entity, from funds provided by the bond issue authorized by Me. Priv. & Spec. Laws 1963, ch. 235.

FACTS:

Me. Priv. & Spec. Laws, ch. 235 (the "Act") authorized a $25 million bond issue "for the purpose of raising funds to provide for the *construction and equipment* of pollution abatement facilities . . . " (Act, § 1; emphasis supplied).

38 M.R.S.A. § 411(1) (Supp. 1968) authorizes the Water and Air Environmental Improvement Commission (the "WAEIC") to partially subsidize the expense of a "municipal or quasi-municipal pollution abatement *construction* program which has received federal approval and federal funds for *construction* . . . " (emphasis supplied).

Both the Act and § 411 are closely linked to the Federal Water Pollution Control Act, 33 U.S.C.A. §§ 466-466k, which provides for federal grants to states in aid of