

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

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

pollution abatement efforts. The relevant portion of the federal statute, for our purposes, reads:

“The Secretary is authorized to make grants to any state . . . for the *construction* of necessary treatment works . . . and for the purposes of *reports, plans and specifications* in connection therewith.” 33 U.S.C.A. § 466e(a) (emphasis supplied).

QUESTION:

May the WAEIC make grants, from funds provided by the Act, to municipalities and quasi-municipal corporations, for detailed preconstruction planning and engineering costs, which form an essential prerequisite to actual construction under a federally approved and funded pollution abatement construction program?

ANSWER:

Yes.

OPINION:

The Act and § 411 must be read together and in conjunction with the federal statute. Detailed planning and engineering costs, which are incurred after a municipality or a quasi-municipal corporation has made the decision to construct a pollution abatement facility, and which form an essential prerequisite of the construction program (as opposed to the cost of pilot plans, feasibility studies, cost estimates and the like) are a part of the “construction program” contemplated by all three statutes, and accordingly are subsidizable under and to the extent permitted by the Act and § 411.

We direct attention to the following limiting language in § 411:

“State grant-in-aid participation shall be limited to grants for waste treatment facilities, interceptor systems and outfalls . . .

“The word ‘expense’ shall not include costs relating to land acquisition and debt service.”

ROBERT G. FULLER, JR.
Assistant Attorney General

CROSS REFERENCE

Grants for unspecified “planning” not authorized, see opinion dated October 3, 1968.

December 13, 1968
Motor Vehicle Division
Secretary of State

Charles E. Wyman, Assistant Director

Registration of Certain Motor Vehicles.

SYLLABUS:

A New Hampshire corporation, which registers vehicles only in that State, but garages