STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

QUESTION:

Does the term "wages" as defined in Title 26 M.R.S.A. § 663, subsection 5 include compensation paid to an employee in any form other than legal tender of the United States, checks on banks convertible into cash on demand, or the reasonable cost to the employer who furnishes such employee board or lodging?

ANSWER:

No.

REASON:

A plain reading of the definition of "wages" set forth hereinabove clearly reveals that the term "wages" only includes compensation paid to an employee in the form of legal tender or checks convertible into cash with the one exception that the employer may include the reasonable cost for furnishing board or lodging to the employee.

It is significant that the five examples set forth above either directly or indirectly constitute expenses of the employer that are being passed on to the employee. Consequently, they cannot reasonably be held to be deductions at the request of the employee.

Where the employer computes the minimum wage and then proceeds to deduct from wages, items that are really expenses to the employer, he is doing indirectly what cannot legally be done directly. Deductions that merely pay the expenses of an employer, as in the examples set out above, cannot be deducted from the wages of the employee if such deductions bring the total wages below the minimum legal level.

HARRY N. STARBRANCH
Assistant Attorney General

September 16, 1969
Treasury

Dura S. Bradford, Deputy Treasurer

Legality of Negotiated Bond Issue

SYLLABUS:

Absent specific legislative action, a bond issue may be negotiated with the approval of the Governor and Executive Council for any term of years not exceeding that stated in the bond issue Act.

FACTS:

The 102nd Legislature at a Special Session proposed a bond issue in the amount of $1,500,000 to develop the Allagash Waterway. The bond issue was ratified by the people at a special election. During the intervening years most of the bonds have been issued until there is presently a balance of $250,000 not issued. The Act, P. & S. L. 1965 Chapter 277, places a limit of 5% on this bond issue. The present bond market is such that any bids for bonds would run over 6%.

The Treasurer of State has negotiated a sale of the $250,000 in bonds with a local bank which will buy them at 5% covering a period of 5 years.

QUESTION NO. 1:

May bonds be sold by negotiation without public bids?

QUESTION NO. 2:

May the balance of the Allagash Waterway bonds be sold with maturity dates within 5 years?

ANSWER NO. 1:

Yes.

ANSWER NO. 2:

Yes.

OPINION:

We note that P. & S. L. Chapter 277 in section 2, carries the usual language "The Treasurer of State is authorized, under the direction of the Maine State Park and Recreation Commission, with the approval of the Governor and Council to issue bonds from time to time . . . ." There is no language in section 2 which indicates that bonds must be sold by competitive bid.

We look at section 4 which states in part, "The Treasurer of State may negotiate the sale of such bonds by direction of the Maine State Park and Recreation Commission with the approval of the Governor and Council."

It must be understood that the legislature in enacting bills does not duplicate language unless it has some purpose. The first quotation from section 2 authorizes the issuance of bonds. The second quotation from section 4 authorizes the State Treasurer to "negotiate" the sale. It does not indicate in what way a negotiation must be carried on. It simply authorizes the Treasurer of State with the approval of Governor and Council to negotiate the sale of bonds. Therefore, we must conclude that if the Governor and Council approve a Council Order authorizing the sale of bonds on the basis negotiated by the State Treasurer, such an order is legal.

As to the question regarding the 5-year term, we note that the second paragraph of section 2 reads in part, "such bonds shall be dated, shall mature at such time or times not exceeding 20 years from their date . . . ." This language merely places a limitation on the length of time within which the bonds must mature. In the present instance, the bonds will mature serially within 5 years which is less than 20 years and, therefore, within the time stated in the Act.

A search of the Maine Revised Statutes does not reveal any general law which would prevent the procedure being used in this instance from being legal.

GEORGE C. WEST
Deputy Attorney General