

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

Generally speaking, the word "consecutive" means successive, following in regular train, succeeding one another in regular order. *Bledsoe v. Johnston* (D.C. Cal.), 58 F. Supp. 129, 131. "Consecutive" ordinarily conveys the thought of unbroken sequence or uninterrupted succession. *Commonwealth v. City of Boston*, 316 Mass. 410, 55 N.E.2d 686, 687. The term "consecutive" is thought to be synonymous with "successive"; and these words are often used interchangeably. *Dever v. Cornwell*, 10 N.D. 123, 86 N.W. 227, 230; *Copher v. Barbee* (Mo. App.), 361 S.W.2d 137, 145.

Rules have been promulgated by the lawmakers respecting the construction of statutory words and phrases, and those rules are to be observed unless the resulting construction is inconsistent with the plain meaning of the law. The general rule is that words and phrases shall be construed according to the common meaning of the language. *1 M.R.S.A. § 71, sub-§ 3*.

A lapse of a few days between terms, occasioned by posting and confirmation times, would not constitute an interruption of "consecutive years". This is particularly so where the judge is appointed to succeed himself and the lapse is the result of the mechanics of reappointment. We cannot say at this time what lapse of time would constitute a break in "consecutive years". We prefer to make that judgement when a factual situation is presented.

JOHN W. BENOIT, JR.  
Deputy Attorney General

January 6, 1972  
Education

Keith L. Crockett, Sec.-Treas.  
Maine School Building Authority

Utilization of Alternate Method of Paying School Construction Aid ( 3460) on Maine School Building Authority Projects.

**SYLLABUS:**

The "alternate method" of paying State school construction aid to administrative units (20 M.R.S.A. § 3460) is permissible for Maine School Building Authority projects, if authorized by the State Board of Education and if funds are available.

**FACTS:**

The Maine School Building Authority (hereinafter referred to as Authority) has received several applications from administrative units seeking assistance in the financing of needed school construction. The application received from Lisbon is illustrative of these plural applications and it exemplifies the situation giving rise to your request for an opinion.

The Lisbon application seeks financing assistance on two projects: (1) a high school addition, and (2) construction of a middle school. A data sheet showing preliminary estimations respecting the two projects is attached hereto. Reference will be made only to the high school addition project. The middle school project figures are only cumulative of the factual situation calling for our opinion.

Lisbon's application for construction aid submitted to the Authority indicates that such aid would be due Lisbon on qualifying items totaling \$822,500. (Administration costs of \$2500 and capitalized interest in the amount of \$55,000 are not items which

qualify for construction aid.) Utilizing Table II of 20 M.R.S.A. § 3457, Lisbon is in class 9 and is entitled to 46% State support of construction projects. That means Lisbon would receive State funds totaling \$378,350 on the high school addition project. The total cost of the project would be \$880,000 (including administration costs and capitalized interest). When the State construction aid funds are subtracted from the \$880,000 cost and when local funds of \$1650 are also subtracted (for the purpose of 'rounding off' the amount of bonds to be sold by the Authority), the preliminary estimations show that the Authority would need to sell bonds in the amount of \$500,000. The preliminary estimation is prepared utilizing the alternate method of paying school construction aid specified in 20 M.R.S.A. § 3460. That section allows the State Board of Education, if funds are available, to pay one-half of the financial assistance due the administrative unit when evidence is submitted that the local officials have contracted or arranged for the construction of the facility, followed thereafter by payment of the balance of State construction aid when proof has been submitted to the Commissioner of Education that the project is completed in accordance with approved plans and a full report of the capital outlay expenditures on the project has been made to the Commissioner. If this "lump sum" alternate method of paying school construction aid is available on Lisbon's application, the amount of bonds to be sold by the Authority will be in the amount of \$500,000, but if the alternate method is not available to Lisbon, then the bonds of the Authority must be sold in the amount of \$880,000, and Lisbon would receive its State school construction aid on the installment basis. Of course, utilization of the alternate method of paying school construction aid on the project would mean the saving of a considerable sum of money to the State in interest. It is fact that funds are available to the State Board of Education to authorize the alternate method concerning the Lisbon High School project.

*QUESTIONS:*

1. Whether the State Board of Education can legally authorize the alternate method ( 3460) of paying school construction aid to Lisbon on the high school addition project made the subject of an application to the Maine School Building Authority?
2. Would Lisbon be entitled to receive its State construction aid under the alternate method of payment of such aid if the high school addition project is financed through the Maine School Building Authority and title to the project is in the Authority until the lease payments are fully made?
3. Whether the Department of Education may legally deposit the State construction aid directly with the trustee bank of the Authority for credit to the Lisbon high school addition project without violating the rights of the Town?

*ANSWERS:*

1. Yes.
2. Yes, if authorized by the State Board of Education and funds are available.
3. Only if the Town and Trustee agree to such arrangement.

*REASONS:*

1. Historically, the recipient of financial assistance from the Authority reimburses the Authority over a stated period of years for bonds issued by the Authority to pay for the construction of the project. Section 3457 of Title 20 provides for the filing of reports

by the administrative unit showing the expenditure for capital outlay purposes, including "the amount of rental due the Maine School Building Authority under lease agreement". In the event that an administrative unit is delinquent in any of its lease payments to the Authority, the Department of Education is authorized to make lease payments to the Authority from any amounts of State aid payable to the administrative unit by the Department. 20 M.R.S.A. § 3507. The question here is whether the so-called "lump sum" alternate method of paying school construction aid (§ 3460) is legally available concerning projects funded by the Maine School Building Authority. Nothing appears in § 3460 (the alternate method of payment provision) foreclosing use of the alternate method of paying State construction aid respecting projects of the Maine School Building Authority. Neither is there any prohibition to the use of the alternate method in the balance of chapter 501 of Title 20 relating to the State aid in financing of school construction. In the event the Town was delinquent in making a lease payment to the Authority, the withholding provision in 20 M.R.S.A. § 3507 would be available to the Department of Education from "any amounts properly payable to such administrative unit" (subsidy), though the State construction aid be fully paid the unit.

The affirmative answer we give to the first question necessarily involves the second paragraph of § 3460. The language in that paragraph provides that the State Board of Education is not authorized to utilize the alternative method of paying school construction aid "unless funds have then been appropriated in an amount sufficient to meet the total estimated amount of State aid payable on account of the capital outlay project on which such State aid is to be so paid". Thus, it is necessary for the State Board of Education to determine, as a matter of administration, whether funds have been appropriated within the purview of the reference paragraph. It is fact that funds are available.

2. If the State Board of Education authorizes the use of the alternate method of paying school construction aid to Lisbon concerning the high school addition project and funds are available, the lessee Lisbon would be entitled to State construction aid funds in the amount of \$378,350 on the high school addition project, even though the Authority would hold legal title to the project until the bonds are completely paid by Lisbon over the period of the lease agreement. Under the installment method of paying school construction aid to administrative units, such aid has been legally paid over the years though title to the project is in the Authority until the lease is fully paid.

3. The third question really amounts to an administrative matter. If the Department of Education enters into a formal understanding with Lisbon respecting the depositing of the State construction aid directly with the trustee bank of the Authority, and if the trustee consents, then that method of bookkeeping would not violate the rights of Lisbon within the purview of the statutes relating to the Authority.

JOHN W. BENOIT, JR.  
Deputy Attorney General

*LISBON*

*Years @ 5½%*

*46% Construction Aid*

*PRELIMINARY ESTIMATIONS*

*HIGH SCHOOL ADDITION*

*MIDDLE SCHOOL*

<i>ITEM</i>	<i>M.S.B.A. LEASE</i>	<i>APPLICABLE FOR CONSTRUCTION AID</i>	<i>APPLICABLE FOR CONSTRUCTION AID</i>	<i>APPLICABLE FOR CONSTRUCTION AID</i>
Construction	\$628,115	\$628,115	\$755,154	\$755,154
Site			25,000	25,000
Equipment	76,230	76,230	60,942	60,942
Architect	42,712	42,712	51,500	51,500
Clerk-of-Works			10,000	10,000
Legal	1,000	1,000	1,160	1,160
Insurance	8,000	8,000	8,000	8,000
Adm. Cost	2,500		2,900	
Capitalized Interest	55,000		63,800	
Contingency	66,443	66,443	81,544	81,544
Totals	880,000	822,500	1,060,000	993,300
Local Funds	1,650	x .46	23,082	x .46
State Funds	378,350	378,350	456,918	456,918
Bonds To Be Sold	500,000		580,000	
First Annual Payment	Prin. \$25,000 Int. 27,500 \$52,500		Prin. \$29,000 Int. 31,900 \$60,900	
Total First Payment		\$113,400		
Local Assessed Valuation	26,397,445			
Mil Increase Per \$1,000	4.3			
State Valuation 1971	16,400,000			
Debt Limitation	1,979,808			
Total Debt to Date	264,615			
12½% State Valuation	2,050,000			
Present N.S.B.A. Debt	109,200			

\$13,650 Prin.  
8 Yrs. to Retire

February 3, 1972  
Economic Development

Richard L. Kelso, Director  
Lee M. Schepps, Assistant

Attorney General

Use of public credit by municipality to assist private industrial and manufacturing enterprises.

*SYLLABUS:*

A municipality may, pursuant to certain express constitutional provisions, issue general obligation notes or bonds, to construct buildings for industrial use to be leased or sold to any responsible industrial firm. There is no legislation implementing those constitutional provisions, but none is required because they are self-executing.