

# 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)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

# STATE OF MAINE

Inter-Departmental Memorandum Date June 19, 1974

To George C. Gormley

Dept. Environmental Protection

From Donald G. Alexander, Assistant

Dept. Attorney General

Subject State Grants in Aid and Pollution Bond Issue

In your memo of April 29, you asked certain questions relative to interpretation of Chapter 181 of the Private and Special Laws of 1969 - the pollution abatement bond issue.

Before answering the questions I would make one note: Your memo states:

"The Federal Water Pollution Control Act Amendments of 1972 extended eligibility for grants to build pollution abatement facilities beyond waste treatment plants, interceptors and outfalls to such items as storm water separation, extension of lateral sewer systems and, in fact, to almost any item normally included in a municipal sewerage system."

The 1972 Amendments are not this broad. Aid for collection systems is carefully restricted, and there is no implication that aid can be provided for almost any sewage system.

Regarding aid for collection systems, Section 211 of P.L. 92-500 states:

"No grant shall be made for a sewage collection system under this title unless such grant (1) is for replacement or major rehabilitation of an existing collection system and is necessary to the total integrity and performance of the waste treatment works servicing such community, or (2) is for a new collection system in an existing community with sufficient existing or planned capacity adequately to treat such collected sewage and is consistent with section 201 of this Act."

The conference report on the Act further indicates the restricted nature of the authority to aid such sewer systems.

"The authority provided in this section covers only communities in existence on the date of the enactment of this bill. It is the committee's intent that sewage collection systems for new communities, new subdivisions or newly developed urban areas, be addressed in the planning of such areas and be included as a part of the development costs of the new construction in these areas. They are not to be covered under the construction grant program." (A Legislative History of the Water Pollution Control Act Amendments of 1972, U.S. Senate Committee on Public Works, Report 93-1, p. 302.)

**AN INFORMAL OPINION**

With this background, the responses to the questions follow:

QUESTION: Does the verbiage in Section 1 of Chapter 181 where it says under the "Revised Statutes and acts amendatory thereof" leave such an open endedness that the Statutes could be changed to include any municipal sewer facilities?

ANSWER: The terms of Section 1 of Chapter 181 in no way restrict the capacity of the Legislature to amend the statutes referred to in the referendum.

DISCUSSION: Unless restricted by the Constitution the Legislature is free to amend statutes as it sees fit. The fact that a statute has been referred to in a bond issue which has been approved by a referendum does not affect the capacity of the Legislature to amend the statute referred to.

QUESTION: Could a bond issue for construction of pollution abatement facilities include lateral systems which, in fact, are not pollution abatement facilities, but actually pick up areas not presently served by a system and increase the pollution load to the State's watercourses?

ANSWER: A bond issue for construction of capital facilities can include any facilities specified in the bond issue. But, the proceeds of the 1969 bond issue cannot be used to aid construction of lateral sewer systems which would increase the pollution load to the waters of the State.

DISCUSSION: Neither the present state law defining pollution abatement facilities, 38 M.R.S.A. § 411 nor the principal federal statute providing aid for pollution abatement facilities, Title II of P.L. 92-500, § 212(2) include such lateral systems in their definition of eligible systems. Such lateral systems have not traditionally been considered pollution abatement facilities. Thus, it is not possible to argue that such systems were contemplated among the purposes which the 1969 bond issue was intended to achieve. Another bond issue could be adopted covering lateral sewer systems.

QUESTION: Would statutory changes be sufficient to resolve the above questions, or where this was a referendum item, would it be necessary to go back to referendum for these changes?

ANSWER: Referendum items may be modified by statute, and statutory definitions may be different from the normal meaning of words. Therefore, the definition of pollution abatement facilities, etc. might be amended to cover other matters, but the amendment of the definition cannot create any unreasonable diversion from the original purpose of the statute. There might be such a risk if bond issue proceeds were used to subsidize sewers from new developments and thus increase pollution loads.

AN INFORMAL OPINION

DISCUSSION: The Maine Courts have allowed the Legislature to repeal a part of a law originally adopted by referendum, Jones v. Maine State Highway Comm., Me. 238 A.2d 226 (1968). If repeals are allowed, amendments certainly should be and have been in other states, 82 C.J.S., Statutes, 150. Also, the Legislature, in adopting amendments, may adopt a definition of a word different from that commonly used; "A statute by definition of common words therein may restrict the meaning thereof when and as used in the statute," State v. Maine State Fair Ass'n, 148 Me. 486, 489 (1953). And courts will accept such legislative changes in meaning except when the nature of a statutory application is changed unreasonably.

"While the lawmaker is entirely free to ignore the ordinary meanings of words and make definitions of his own . . . that device may not be employed so as to change the nature of the acts or things to which the words are applied." Carter v. Carter Coal Co., 298 U.S. 238, 289 (1936).

"It is questionable whether a legislature could, by defining as a dog an animal having the components of a horse, subject the owner of a horse to the dog licensing statute." United Interchange v. Spellacy, Conn., 136 A.2d 801, 805 (1957)

The Maine Court may be more strict in examining revisions of statutes which could appear to dilute the abatement goals of the referendum. The Court has held:


"that by the initiative amendments the people, as sovereign, have retaken unto themselves legislative power and that a particular undertaking by them to exercise that power shall be liberally construed to effectuate the purpose." Opinion of the Justices, Me., 275 A.2d 800, 803 (1971).

Whether including lateral sewers and other sewer facilities which might increase pollution loads as pollution abatement facilities eligible to receive aid from Chapter 181 proceeds would so change the nature of the intent of the Bond issue as to fall to a court challenge may depend on the type of sewers that are aided.

Aid for sewers to existing developments would serve the basic pollution abatement purpose by substituting one abatement method--mechanical treatment--for another--septic tanks, or providing treatment for presently untreated direct discharges. But it would not tend to increase general pollution loads unlike sewers to new discharge sources. It may be difficult to consider such subsidies for new development as "abatement" particularly in light of the Federal experience, cited above, which has been very restrictive in terms of aiding sewers with funds intended for "abatement" activities. Thus, if statutory changes alone are to be relied on, the definition of pollution abatement should be expanded to allow support for sewage systems only to the extent that

**AN INFORMAL OPINION**

such systems pick up sewage from existing developments. Aid for sewers for new developments should not be allowed.

  
DONALD G. ALEXANDER  
Assistant Attorney General

DGA:mfe

AN INTERNAL COPY