

MAINE STATE LEGISLATURE

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May 5, 1975

John P. O'Sullivan, Commissioner

Finance and Administration

Charles R. Larouche, Assistant

Attorney General

Honeywell-Maine Contract of May 2, 1972; Effect on Article IX, Section 14, Constitution of Maine

"In the event the State terminates for non-allocation of funds in the manner provided for in paragraph 2c title to the equipment shall
This replies to your letter of April 29, 1975, concerning the subject fiscal period."

I understand your question to be whether or not the subject contract created a "debt" within the meaning of Article IX, Section 14, Constitution of Maine.

Upon review of the subject contract in light of the pertinent judicial decisions, it appears to me that subject contract does not create a debt within the meaning of Article IX, Section 14, Constitution of Maine. That contract is not a mere lease, but, instead, it is a contract which provides for the purchase of electronic data processing systems and components. The contract commences with the declaration that are "Honeywell agrees to furnish and install, . . . and to sell to the State, and the State hereby purchases from Honeywell all those electronic data processing machines listed on attached Rider B." Paragraph 19c provides:

"Title to the items of equipment furnished under this Agreement shall pass to the State on the date such equipment is installed, made ready for use and has passed the standard of performance. Honeywell retains and reserves a security interest in each unit of equipment sold hereunder until the full amount due (including the purchase price and any other charges payable to Honeywell) is paid to Honeywell."

The contract certainly seems to create a "debt" in the ordinary sense of that term. However, Paragraph 2c provides:

"The State may discontinue the use of any or all equipment which has been installed for one year or more under any resulting contract, or any anniversary date, or at the beginning of a subsequent fiscal period without penalty for either:

"(1) Lack of appropriation of funds for the data processing equipment."

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Paragraph 19d provides:

"In the event the State terminates for non- allocation of funds in the manner provides for in S. in paragraph 2c title to the equipment shall revert to Honeywell at the end of the State's fiscal period."

Paragraph 21 provides:

"State's obligation is payable only and solely from funds appropriated for the purpose of this agreement."

It seems clear that the State's agent has expressly limited the State's obligation under this contract to make payments for the installed equipment to funds which may be appropriated by the Legislature for this purpose and only if such funds are in fact subsequently so appropriated. Such an obligation is not one to pay in any event but only out of current appropriations expressly made therefor, and only if there are any such appropriations. That is not a debt within the meaning of Article IX, Section 14, Constitution of Maine. Compare Reynolds v. Waterville, 92 Me. 292; Opinion of the Justices, 99 Me. 515; and Opinion of the Justices, 146 Me. 186.

If I can be of any further aid to you in this matter, please advise me.

CHARLES R. LAROUCHE
Assistant Attorney General

CRL:mfe