

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date March 1, 1976

To Asa A. Gordon, Deputy Commissioner Dept. Educational & Cultural Services
From W. G. Buschmann, Asst. Attorney Gen. Dept. Educational & Cultural Services
Subject Use of State Monies to Correct Unexpected, Off-site Damages Caused
by Excavation for a New School Building

SYLLABUS:

An administrative unit's cost for correcting damages suffered by neighboring property owners as the result of the excavation for a new high school building does qualify as a legitimate construction expense which may be paid for with State monies pursuant to 20 MRSA, § 3457, et. seq.

FACTS:

The City of Calais is in the process of constructing a new high school. Excavation for the building site began on September 11, 1975. A pond or puddle of surface water, which was fed by a groundwater recharge, existed prior to that time in the general location where the new library and classroom areas are to be situated. For three days following September 13, 1975, three wells downhill and northeast of the job site turned cloudy and muddy. The flow of water in one of these wells basically stopped.

A study by the Briggs Engineering & Testing Company, Inc., of Norwell, Massachusetts, concluded that these wells were most likely rendered inoperable by the uphill construction of the high school. The Briggs report recommended that new wells should be constructed to replace the affected wells. The construction of new wells was authorized by the Superintendent of Schools and has been completed.

The State Board of Education, on January 10, 1975, authorized the construction of the new Calais High School. Pursuant to 20 MRSA, § 3457, the Board specified that the construction cost of the new school must not exceed \$3,446,500.00. It is anticipated that on-site construction costs plus the cost of the three wells will not exceed that figure.

QUESTION:

Is it legal to expend State monies under 20 MRSA, § 3457, et. seq. for correcting damages suffered by neighboring property owners as the result of the excavation work on a new high school?

ANSWER:

Yes.

REASONS:

The Legislature provided in 20 MRSA, § 3457, that the "administrative unit shall be reimbursed the sums expended for major capital outlay projects which have been approved" by the State Board of Education. A "full report of the cost of said construction and other expenses for major capital outlay purposes" must be submitted to the Commissioner of Educational and Cultural Services before an administrative unit may be reimbursed for the sums it has expended.

The Legislature has defined by statute (20 MRSA, § 3505, subsection 2) that the "cost" of a project shall include the cost of "legal expenses ...and such other expense as may be necessary or incident to the construction...of the project. Any obligation or expense hereafter incurred in connection with the construction or acquisition of a project may be regarded as a part of the cost of such project."*

It has been documented by the Briggs report that the wells were damaged by the excavation work on the new Calais High School. It is reasonable to assume that the legislature intended to cover cost of replacing those wells since it is an expense "incident to the construction...of the project." It is also an obligation assumed by the City of Calais "in connection with the construction" of the project and should "be regarded as a part of the cost" of the project.

The Legislature has also defined major capital outlay (20 MRSA, § 3712, subsection 11) so that it "shall include all costs which are related to or incidental to new construction...of any building..." Since the damage to the wells resulted from the excavation work on the school, the cost of correcting the damage would be incidental to the cost of constructing the school.

State monies may be used under 20 MRSA, § 3457, et. seq. for the construction of the new wells if the cost of the new wells, added to other construction costs of the project, does not exceed \$3,446,500. (Amount approved by the State Board of Education.)

*20 MRSA, § 3505 deals with definitions to be applied to § 3501 to 3517. The Maine Supreme Judicial Court in City of Westbrook v. Logan, 227 A2d 793 at 794 (Me. 1967) has established the precedent of using these definitions in reference to a question of whether the construction of athletic fields would qualify for § 3457 reimbursement.