

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date March 19, 1976

To John P. O'Sullivan, Commissioner

Dept. Finance and Administration

From Joseph E. Brennan, Attorney General

Dept. Attorney General

Subject Your request of March 10, 1976

You have asked whether Article IX, Section 14, of the Constitution prohibits the State from borrowing funds in anticipation of taxes levied in one fiscal year, but not collected until the subsequent fiscal year. I assume by this that you refer to a temporary borrowing that is not in fact repaid until the fiscal year following the year in which the loan was made. I also assume that your question was prompted by Section 2 of Part B, L. D. 2225, which would amend 5 M.R.S.A. § 150 to replace its requirement that temporary loans be repaid during the fiscal year in which made with a requirement that they be repaid within one year of the date on which the loan is made. We conclude that Article IX, Section 14 of the Constitution prohibits the amendment proposed.

Article IX, Section 14 of the Constitution prohibits the Legislature from creating any debts or liabilities on behalf of the State exceeding in the aggregate, at any one time, \$2,000,000, with specified exceptions. One of those exceptions is "temporary loans to be paid out of money raised by taxation during the fiscal year in which they are made" (emphasis added). The word "raised" typically means having the money in hand available for use. The word "taxation" used alone typically includes both levy and collection of taxes, the combination being taxation. Hence, the phrase "money raised by taxation during the fiscal year" describes and requires repayment from money paid into the State treasury during the fiscal year in question. That is the year "in which they [the loans] are made."

Thus, Article IX, Section 14 deprives the Legislature of any power to authorize temporary borrowing that need not be repaid out of money actually paid into the treasury during the fiscal year in which the loan is made. The present Section 150 of Title 5, which was adopted to implement the Constitutional amendment that authorized temporary borrowing, mandates the treasurer to repay any temporary loans during the fiscal year in which the loan has been made and thus conforms to the Constitutional mandate. The proposed amendment would permit repayment within one calendar year following the borrowing and thus would create the possibility that a loan might be made in one fiscal year and repaid in another, and the further possibility that repayment would occur out of money raised by taxation during a fiscal year subsequent to the fiscal year in which the loan was made. The Legislature has no Constitutional power to enact a statute that would authorize such a result.