

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)

60 - 1 JF T
April 22, 1976

James Leigh

Environmental Protection

Joseph E. Brennan, Attorney General

Attorney General

Reimbursement of General Fund for Advances to Maine Coastal Protection Fund

SYLLABUS:

The Department of Environmental Protection may expend monies from the Maine Coastal Protection Fund to reimburse the General Fund for advances made to the Department to enforce and administer the Oil Discharge Prevention and Pollution Control Act.

FACTS:

The Maine Coastal Protection Fund ("Fund") was created by Title 38 M.R.S.A. § 551 as a means to finance the enforcement of oil spill prevention laws, to pay for clean-up expenses and to compensate persons damaged by oil spills. The Fund is a revolving account of \$4 million comprised of transfer fees imposed on the transfer of oil in Maine waters and administered by the Department of Environmental Protection ("DEP"). The Oil Discharge Prevention and Pollution Control Act ("Act"), of which the Fund provisions are a part, was enacted in 1970. Immediately upon its enactment, ten major oil companies and a major oil pipeline common carrier obtained an injunction against collection of fees from those companies. That injunction remained in effect until a final decision was rendered by the United States Supreme Court in 1974. The decisions of the Maine and United States Supreme Courts ultimately sustained the constitutionality of the Act and Fund.

In the period of time between the effective date of the Act and the final judgment in the State's favor, the Act remained in full force and effect, except that fee collection from the eleven companies was prevented by the injunction.

Except for fees collected from companies not a party to the lawsuit, the Fund was nearly inoperative for four years. As to those fees that were collected, DEP had them held in a special escrow account in the event that the Act and Fund were declared unconstitutional and a refund was required. For all practical purposes, therefore, the DEP had no money in the Fund and no means to carry out the purposes of the Act during that entire period. In order to carry out the other goals of the Act, enforce violations and clean up spills, DEP received legislative appropriations. The amount appropriated and spent from the General Fund during the period 1970-1974 was approximately \$196,773. (See, P.L. 1969, c. 572, § 4 and P. & S.L. 1971, c. 91.)

James Leigh
Page 2
April 22, 1976

The Fund is now fully funded and is being used for all statutorily authorized purposes. The DEP, at the request of the Department of Finance and Administration, is considering reimbursing the General Fund for all appropriations made to the DEP for use as authorized by the Act, with interest. The DEP proposes to compute interest at the rate which the State would have earned had the appropriations been invested in treasury notes.

QUESTION AND ANSWER:

May the Department of Environmental Protection reimburse the General Fund from proceeds of the Fund for appropriations made to it for use in enforcement and administration of the Act, with interest? Yes.

REASONING:

Section 551(5) specifies the purposes for which monies may be expended from the Fund. Those permissible expenditures include administrative costs, personnel, equipment and related enforcement costs, clean-up costs, third party damage claims and arbitration costs. The General Fund appropriations made to the DEP were expended for the purposes specified in that subsection.

It is clear from the surrounding circumstances that such appropriations were to supplement the Fund and to enable the DEP to administer and enforce the Act until such time as the Fund was operational. In a sense, the General Fund appropriations thus constitute a loan creating a debt against the Fund incurred for legitimate purposes as set out in § 551(5). Since the monies acquired in these "advances" were used for permissible purposes, the DEP may, if it chooses, return the "advance" to the General Fund.

Consistent with this reasoning, it is equally permissible to pay interest to the General Fund for the advances. The amount of the interest to be paid should be determined by the DEP to reflect interest which might have been owed had these advances might have earned had it been invested in the normal manner in which State monies are so handled. The suggested interest calculation set forth in the Facts herein appears to meet that test.

Finally, the reasoning used herein is consistent with State statutes that require departments and agencies to reimburse the State for advances of working capital and for expenses incurred

James Leigh
Page 3
April 22, 1976

by an agency, the activities of which are paid for wholly or in part by a source of regular revenue other than the General Fund. See 5 M.R.S.A. §§ 1506 and 1586.

JOSEPH E. BRENNAN
Attorney General

JEB/ec
cc: Richard Dieffenbach
State Controller