

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)

20 MP 18 3457

20 MP 18 223

20 MP 18 3460

STATE OF MAINE

Inter-Departmental Memorandum Date June 30, 1977

From Larry Pineo, Associate Commissioner

Dept. Educational and Cultural Services

From Waldemar G. Buschmann, Asst. Atty. Gen.

Dept. Attorney General

Subject Use of Income Earned on the Income of Bond Proceeds

FACTS:

In January, 1974, the State Board of Education gave its concept approval in the amount of \$2,424,000 for the construction of a new high school in School Administrative District No. 15 (Gray-New Gloucester).

In July of 1974, the voters in the towns of Gray and New Gloucester voted to authorize the school directors of School Administrative District No. 15 "to issue bonds or notes in the name of said District for capital outlay purposes in an amount not to exceed \$2,800,000 for the purpose of constructing a new high school, which is to be built as an addition to the existing Gray-New Gloucester High School on the Libby Hill Road in Gray, Maine." (Appendix 1) In August, 1974, the Board of Directors of School Administrative District No. 15 formally received and placed on file in the records of the District the results of the votes of the towns of Gray and New Gloucester.

In October, 1974, the State Board of Education gave final funding approval to SAD #15 for the construction of its new high school in the amount of \$2,800,000. (Appendix 2)

In October of 1975, School Administrative District No. 15 sold bonds in the amount of \$2,575,000. The unused portions of the proceeds from the sale of those bonds have been continually invested so that, as of February 11, 1977, the net income from the investment of those proceeds amounts to approximately \$116,928.78. (Appendix 3)

In January, 1976, the State Board of Education adopted the policy which requires that the net income from the investment of those proceeds be applied towards the debt retirement schedule of the school administrative unit. (Appendix 4)

As of May 1, 1977, the State has made payments to SAD #15 in the amount of \$417,961.20 to cover interest and principal payments due on the bonds sold in October of 1975; \$130,000 of that amount was applied against the principal of those bonds and \$287,916.20 was applied against the interest due on those bonds.

QUESTION:

Does the Commissioner of the Department of Educational and Cultural Services have the authority to deduct from subsequent debt service payments to School Administrative District No. 15 the net income earned on the investment of the bond proceeds?

ANSWER:

The Commissioner of the Department of Educational and Cultural Services has the authority and the duty to deduct from subsequent debt service payments to School Administrative District No. 15 the net income earned on the investment of the bond proceeds.

REASONS:

Pursuant to 20 M.R.S.A., Section 3457, the School Administrative District No. 15 sought and received the approval of the State Board of Education for the construction of a new high school. Having received the concept approval from the State Board in January, 1974, the School Administrative District took the question to the voters of School Administrative District No. 15 as required by 20 M.R.S.A., Section 225, sub-section 3, paragraph A.

The voters of School Administrative District No. 15 voted in the affirmative to authorize

"the school directors of School Administrative District No. 15... to issue bonds or notes in the name of said District for capital outlay purposes in an amount not to exceed \$2,800,000 for the purpose of constructing a new high school."

The Board of Directors of School Administrative District No. 15 received authority from the voters of the District to raise the money solely to be used for capital outlay purposes specified in the warrant. Any other use of the money would be contrary to the intent of the voters.¹

Pursuant to Section 223 of Title 20, M.R.S.A., the State Board of Education has authority to make "such reasonable regulations as it may find necessary for carrying out the purposes, provisions and intent of these sections". The following is part of a policy which the State Board of Education adopted pursuant to Section 223:

"Unused portions of the bond proceeds shall be reinvested at all times in such a manner as to be fully secured with as high rate of return as possible.

"Income from the reinvestment of unused bond proceeds shall be applied toward the interest costs of temporary borrowing.

"D. The difference between the income from reinvesting unused portions of bond proceeds and the interest costs of temporary borrowing shall be applied toward the next interest payment or principal and interest payment listed on the debt retirement schedule filed with the Department until the difference is depleted."

¹ See Rector v. Consolidated School Dist. No. 3 of Platte County (Mo. 1933), 58 SW2d 785; Hudson v. San Antonio Independent School Dist. (Tex. 1936), 95 SW2d 673; Bell v. Board of Education J. Burren County School Dist. (Ky. 1961), 343 SW2d 804; State Highway Commission v. Spainhower (mo. 1973), 504 SW2d 121-- interest or income from road fund must be credited thereto, and held against withdrawal or use for any purpose other than state highway purposes.

Thus, the State Board has adopted a policy authorizing the Commissioner to deduct, from subsequent debt service payments to School Administrative District No. 15, the net income earned on the investment of the unused portions of the bond proceeds.

Although 20 M.R.S.A., Section 3460 does not have a direct bearing upon the capital construction project of SAD #15, it does deal with school construction aid and sets forth the intent of the Legislature to minimize the State's participation in the cost of new school construction. The second paragraph of Section 3460 states in part that:

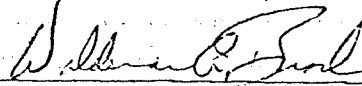
"Advance payments on projects for which the State Board of Education authorized the alternate method of payment under section 3460, as then in effect, are ratified in the local administrative units which have received such payments shall invest that portion of the proceeds of such advances which is not required for immediate disbursement for project expenditures. An amount equal to any interest earned on such investment of the proceeds of an advanced payment shall be deducted from any balance of construction aid payable to the unit on the project."

Also, the Legislature set forth in the eighth paragraph of Section 3457 the requirement that "the Commissioner shall cause to be deducted all monies expended on the project which are received from federal sources except monies from Federal Revenue Sharing sources." Although the Legislature had not enunciated the policy set forth by the State Board of Education in January, 1976, it is my opinion that the Legislature intended that State participation in construction aid for school administrative units should be minimized wherever possible.

Although there was an administrative letter from the Department of Educational and Cultural Services dated January 16, 1976, which would appear to confuse the issue, it is my opinion that it is the policy adopted by the State Board of Education which is controlling and not the administrative letter from the Department. (Appendix 5) In particular, the letter stated that the State Board's policy adopted in January of 1976 would "not apply to projects for which bonds were sold as of January 16, 1976". However, the State Board did not give solely a prospective application to the policy which it adopted. Rather, the State Board set down the requirement that the net income from "reinvesting unused portions of bond proceeds" shall be used to reduce the amount of interest and principal payments due on the debt retirement schedules.

Thus, a school administrative unit such as SAD #15 may only use the proceeds from the bond sales for the capital outlay purpose authorized by the voters of the District and by the State Board of Education. It would be contrary to legislative intent that the taxpayers of the State of Maine should be paying interest in the amount of \$287,916.20 on the bonds sold while during the same time period School Administrative District No. 15 would be earning \$116,000 on the unused portions of those bond proceeds for its own use. The Legislature could not have intended that a school administrative unit should benefit from such a windfall at the expense of all of the taxpayers in the State of Maine.

The Board of Directors of School Administrative District No. 15 has an affirmative obligation to invest the unused portions of the bond proceeds in a manner which will secure a reasonable rate of return as possible on those proceeds consistent with prudent business practice. The income from such an investment shall be used to offset the costs of the capital construction project approved by the State Board of Education and by the voters of School Administrative District No. 15.



Waldemar G. Buschmann
Assistant Attorney General

August 7, 1974

Board of Directors' Meeting Minutes

The Board of Directors of School Administrative District No. 15 met at the Primary School in Gray, Maine on Wednesday, August 7, 1974 at 8:00 P.M.. All members were present as well as some interested citizens.

Minutes of the previous meeting, July 3, 1974, were declared approved.

The Secretary reported that the results of the voting in the Town of Gray and in the Town of New Gloucester on the bond election called by Warrant of the Directors dated the 10th day of July, 1974, has been received.

It was moved by Hutchinson, seconded by Kennedy and voted that:

1. the results of the voting in the Towns of Gray and New Gloucester, certified by the town clerks respectively, on said bond election be formally received and placed on file in the records of the District.
2. on the basis of said returns showing the results of the voting in the Town of Gray and in the Town of New Gloucester on the following Article:

"Shall the School Directors of School Administrative District No. 15 be authorized to issue bonds or notes in the name of said District for capital outlay purposes in an amount not to exceed \$2,800,000.00 for the purpose of constructing a new high school, which is to be built as an addition to the existing Gray-New Gloucester High School on the Libby Hill Road in Gray, Maine?"

That the following computations be made:

	AFFIRMATIVE	NEGATIVE
Town of Gray	<u>332</u>	<u>168</u>
Town of New Gloucester	<u>109</u>	<u>128</u>
Total District Vote	<u>441</u>	<u>296</u>

and that it be found and declared that the total District vote was 441 in the affirmative and 296 in the negative to authorize the School Directors to issue their bonds and notes in the name of the District for capital outlay purposes in an amount not to exceed \$2,800,000.00 to construct a new high school, and that it be found and declared that the inhabitants of said District had voted in the AFFIRMATIVE on said Article, and that said Article has passed.

3. the Directors authorize the Secretary to enter the computation and declaration set forth above in their records and to send certified copies of said computation and declaration to the Town Clerk of the Town of Gray and to the Town Clerk of the Town of New Gloucester.

The preceding motion passed 9 yes 0 no 2 abstained

It was moved by Kennedy, seconded by Hutchinson and voted unanimously to accept the resignation of Miss Pamela Boal.

It was moved by Sampson, seconded by Hutchinson and voted unanimously to accept the resignation of Mr. Dennis Perry.

Gust K. Burn
Secretary

STATE OF MAINE
STATE BOARD OF EDUCATION

CERTIFICATE OF APPROVAL OF PROJECT FOR SCHOOL CONSTRUCTION AID

Issued to: SAD #15, Gray

The State Board of Education after examining the following project,
New High School.

found that:

1. The administrative unit and the proposed project are eligible for school construction aid under Section 3457, Title 20 of the Revised Statutes of 1964, as amended;
2. The proposed project and the authorized method of financing it are in the best interest of the administrative unit;
3. The total estimated capital outlay expenditure is \$ 2,800,000.00;
4. That the administrative unit and the proposed project are in compliance with R.S. Title 20, Chapter 404, Section 3125 as it relates to the provisions of special education facilities.

Pursuant to Section 3458, Title 20 of the Revised Statutes of 1964 as amended, and in accordance with the vote of the State Board of Education on the

10th day of October, 1974 this Certificate of Approval of the proposed project is hereby issued, under the condition that this approval carries the stipulation that the State Board of Education will consider no requests for additional funding for this project.

Dated this 11th day of October, 1974.

STATE BOARD OF EDUCATION

Carroll A. Millery

By _____

(Secretary)

(Board Seal)

Gray, Maine 04039

Tel. 657-4281

Gerald K. Burns
Supt. of SchoolsDonald M. Christie
Business Mgr.

ACCRUED INTEREST CONSTRUCTION ACCOUNT

11/20/75	30 day C.D.	\$ 2,047.50
1/ 14/76	90 day C.D.	6,750.00
2/ 10/76	Day to Day savings	2,140.43
3/12/76	90 day C.D.	3,665.28
3/10/76	Day to Day savings	1,082.76
4/9/76	Day to day savings	1,217.18
4/13/76	120 day C.D.	21,750.00
5/11/76	Day to day savings	3,021.54
6/11/76	Day to day savings	2,100.47
7/12/76	270 day C.D.	17,055.00
7/12/76	Day to day savings	2,064.53
8/11/76	Day to day savings	1,611.36
9/13/76	Day to day savings	1,047.17
9/12/76	60 day C.D.	2,775.00
10/12/76	360 day C.D.	40,000.00
10/12/76	Day to day savings	1,382.96
11/10/76	Day to day savings	1,350.17
12/9/76	60 day C.D.	3,366.67
12/13/76	Day to day savings	767.30
1/20/77	41 day C.D.	358.75
1/11/77	Day to day savings	1,910.78
2/11/77	Day to day savings	1,895.81

 119,360.66

Interest paid to Casco Bank short
term borrowing until bond sale

 2,431.88

 116,928.78

XII. FINANCING SCHOOL CONSTRUCTION

- A. The Department of Educational and Cultural Services shall commence reimbursement on approved school construction projects only when a long-term bond redemption schedule consistent with Board policy requires payment. An SBA-1 form shall be filed within six months of initial occupancy of a completed building. Up to an additional six months may be granted by the Commissioner if extenuating circumstances are judged to exist.
- B. Local units shall borrow money on a temporary basis only in the amount necessary to meet monthly obligations which are directly attributable to the project. Temporary borrowing shall be accomplished on a competitive bid basis.
- C. The sale of bonds shall be accomplished consistent with Board policy but as soon as practicable. Proceeds from the bond sale shall be used immediately to pay short term principal and interest costs. Unused portions of the bond proceeds shall be reinvested at all times in such a manner as to be fully secured with as high rate of return as possible.
- { Income from the reinvestment of unused bond proceeds shall be applied toward the interest costs of temporary borrowing.
- D. The difference between the income from reinvesting unused portions of bond proceeds and the interest costs for temporary borrowing shall be applied toward the next interest payment or principal and interest payment listed on the debt retirement schedule filed with the Department until the difference is depleted.
- E. In the event the costs of interest on temporary borrowing exceeds the income from reinvesting unused portions bond proceeds, a detailed accounting of investments and costs shall be submitted on the SBA-1 to the Department with the difference reimbursed as a cost of debt service upon approval of the Commissioner.
- F. In the event the bond sale amount exceeds the actual final costs of a project the difference will be handled in the same manner as in "D" above.
- G. Costs in excess of the approved project budget amount will not be allowed.
- H. Interest earned from the time the SBA-1 is filed to the next interest or principal and interest payment is due may be retained for local school use.
- I. Effective Date: This policy shall be effective January 16, 1976 except that the Commissioner is authorized to grant exceptions to this policy in cases where its implementation causes hardships on individual projects.



STATE OF MAINE

Department of
Educational and Cultural Services

AUGUSTA, MAINE 04333

ADMINISTRATIVE LETTER NO. 64

JANUARY 16, 1976

TO: Superintendents of Schools
Directors of Vocational Regions

FROM: Larry N. Fines, Associate Commissioner
Bureau of School Management

SUBJECT: School Construction - Borrowing and Reinvestment Policy

Enclosed for your information and guidance is the policy adopted by the Board relating to financing school construction projects.

In anticipation of some of your questions the following clarifications are offered:

1. This policy will not apply to projects for which bonds were sold as of January 16, 1976.
2. Section B of the policy will not require units regularly using the competitive bidding process when borrowing for other purposes to invite bids specifically for the construction project borrowing if the possibility of a future construction project is included in the invitation for bids.
3. Section I of this policy could cause unexpected hardships on some projects. Requests for exceptions may be directed to either me or Roy Nisbett. If you wish to appeal the decision, obviously you may do so.
4. The SBA-1 form referred to in the policy will be revised and sent to you as soon as possible.
5. Except for "projects approved under the alternate method", do not expect any reimbursement from this Department unless you have filed a debt retirement schedule. After the filing of the SBA-1 form, the debt retirement schedule will be adjusted consistent with the terms of this policy.

LNP/jf



Four seasons for Me.

JAN 21 1976