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Limit Debt Limitations: Provisions For change

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December 21, 1977

Honorable James K. McMahon
Box 125
Kennebunk, Maine 04043

Dear Representative McMahon:

I am responding to your letter of December 15, 1977, in which you asked for our opinion concerning proposed legislation. The legislation you propose would increase the debt limit of the Kennebunk Sewer District, but would also include a limitation on the uses of the additional funds so authorized. The legislation would be in the form of a Private and Special Bill and would be subject to referendum approval by the voters in the district.

You have asked essentially two questions with regard to this proposed legislation. First, you ask whether it is legally permissible to include a limitation on the manner in which the added bond revenues may be expended. Second, you ask whether the limiting language could be later removed by the Legislature without resubmission of this question to the voters in a referendum. The answer to both these questions is affirmative for the reasons stated below.

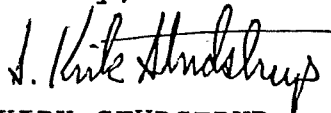
In answer to the first question, our research has not disclosed any constitutional, statutory or charter provision which would prevent legislation increasing a debt limit but limiting the purposes for which the added bond revenue may be used. A limitation of this type would affect only the purposes for which the revenues may be expended and would not change the general obligation nature of the bonds themselves.

In answer to the second question, the fact that a charter amendment has been ratified by local referendum would not act as a limitation upon the Legislature's power to subsequently change that amendment, with or without local approval. The Kennebunk Sewer District was chartered by act of the Legislature. P. & S.L. 1955, Chapter 69. Therefore, the charter is similar to those

enacted by the Legislature for municipal corporations which may be revised, amended, or even repealed by the Legislature at any time. Burkett v. Youngs et al, 135 Me. 459 (1938). This authority is not limited by the manner in which the charter may have been originally approved by local referendum. Stated differently, the general rule of law is that absent constitutional prohibitions, enactments of the Legislature approved by referendum may be subsequently amended or repealed by the Legislature without resubmission to the voters. Jones v. Maine State Highway Commission, 238 A.2d 226 (Me., 1968). There is no such constitutional prohibition contained in the Constitution of Maine; at least insofar as it relates to this question. We have also checked the provisions of the charter of the Kennebunk Sewer District and find no limitation on the manner of amendment. Even if such provision were contained within the charter, the Legislature would have the authority to amend or repeal that provision.

Please continue to call upon us whenever you feel we may be of assistance.

Sincerely,



S. KIRK STUDSTRUP
Assistant Attorney General

SKS:mfe

1/ An example of amendment of a charter without referendum approval is the amendment of the charter of the York Sewer District enacted by the Legislature in P. & S.L. 1955, Chapter 70, the chapter which immediately followed the charter legislation for the Kennebunk Sewer District.