

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)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 15, 1978

Honorable Luman Mahany
House of Representatives
State House
Augusta, Maine

Dear Representative Mahany:

This responds to your letter of February 2, 1978, which raises certain questions regarding L.D. 2128 and the current Maine Potato Tax.

QUESTION #1:

"Does the Bill violate any provisions of the Maine Statutes or the Maine Constitution?"

We do not believe that enactment of L.D. 2128 would be inconsistent with the Maine Constitution. The potential problem area, use of State-raised funds to provide support for a private group, raises the question of whether the funds were being properly spent for a public purpose. See Jones v. City of Portland, 113 Me. 123 (1915), affirmed 245 U.S. 217. The initial section of L.D. 2128 which contains certain legislative findings regarding the importance and public benefits of this use of funds would appear to address the question of the public purpose of the expenditures sufficiently to avoid the question of violation of the constitutional public purpose doctrine.

QUESTION #2:

"Does the language of the Bill permit the Maine Potato Council to use Potato Tax funds: (a) to finance the legal claims of potato growers against shippers, processors, and others; (b) to finance lobbying expenses to promote legislation exclusively designed to protect and promote potato growers; and (c) to pay the salaries of officers and employees of the Maine Potato Council? Would such use of Potato Tax funds violate any provisions of the Maine Statutes or the Maine Constitution? In particular, would this be an unconstitutional expenditure of public funds for a private purpose?"

The bill does not contain specific authorization for financing legal claims or lobbying activities, though such might be involved in its more general authorizations of activities. As the legislation is still in committee, we suggest that if you have questions in this area, the legislation be clarified by amendment or other legislative history in the committee or on the floor to resolve any ambiguities which you believe may exist regarding the potential use of funds for legal claims or lobbying activities. We do assume, from the authorization in L.D. 2128 to provide support for certain administrative activities, that Potato Tax proceeds could be used to pay salaries of employees of the Maine Potato Council. As to the constitutional question you raise regarding use of funds, particularly for lobbying or legal claims, we are not able to answer the question without greater specificity as to how the funds would be used. Such would only be possible when the legislation is finally enacted, and such clarifications of authority as are necessary have been completed.

QUESTION #3:

"Under the Bill, would any funds allocated to the Council under the 30% requirement which were unobligated (as contrasted with unexpended) at the end of a fiscal year be carried forward to the next fiscal year and be available for obligation by the Council in that year?"

As we interpret the legislation, funds allocated to the Council but unobligated at the end of the fiscal year could be carried over to a future fiscal year. However, if you believe there is ambiguity in this area, we again suggest that you seek clarification during the legislative process.

QUESTION #4:

"As 36 M.R.S.A. § 4571 would be amended by the Bill, 5 uses are listed for funds collected (subsection 1, 1-A, 2, 3, and 4). For several of these uses, an amount to be allocated is specified (e.g., 30% of the funds collected are for the Council; \$50,000 for research). If there were a severe short-fall of tax revenues, and sufficient funds were not available for all mandated uses, how would funds be allocated?"

If there was a severe short-fall of tax revenues, the percentage allocation of tax revenues, such as that proposed by L.D. 2128, would continue. Among the specific allocations, such as the \$50,000 for research, there would have to be a pro rata reduction if tax revenues were not adequate to meet all of the specific allocations.

QUESTION #5:

"Does the current Potato Tax statute (i.e., 36
M RSA chapter 709) violate the Maine constitution?"

We believe that the current Potato Tax statute does not violate
the Maine Constitution. See State of Maine v. Vahlsing, Inc.
147 Me. 417 (1952).

I hope this information is helpful.

Sincerely,

Donald G. Alexander

DONALD G. ALEXANDER
Deputy Attorney General

DGA/ec

cc: Hon. Carl W. Smith
Hon. Richard E. McKean
Hon. Leonard R. Lougee
Bill Brown -