

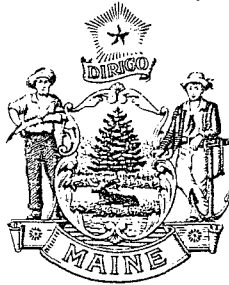
MAINE STATE LEGISLATURE

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

March 9, 1979

Honorable Stephen Hughes
Maine House of Representatives
State House
Augusta, Maine 04333

Re: An Act Concerning Surplus Funds for Lewiston-Auburn
Airport Authority

Dear Representative Hughes:

After discussion with Duane Stinchfield, Manager of the Lewiston-Auburn Airport, and review of the history of this matter and recent court decisions, it is my opinion that the bill you wish drafted is unnecessary.

The Department of Transportation has included work at the Lewiston-Auburn Airport in its project proposals for the next biennium, including partial financing in its bond issue request.

What remains is a desire by the Lewiston-Auburn Airport to gain release of 1967 bond issue monies for as yet undefined purposes. To gain access to these 1967 bond issue monies, the Airport has sought your assistance in submitting legislation which would retrospectively change the original purposes for which the bonds were authorized at referendum. (Amendment of C. 178, P. & S.L. 1967). A similar amendment effort was made in 1971, but rejected at referendum by the voters. Since that time we have issued several opinions about diverting the funds to purposes not specifically authorized by Chapter 178. Each of those opinions has concluded that such diversion was not legally permissible.

As a result of a recent decision by the United States Supreme Court [United States Trust Co. v. New Jersey, 431 U.S. 1(1977)], I must now advise you that no diversion of that money can be made without impairing the State's contractual obligation to the bondholders.

The United States Trust Company case arose out of a 1974 New Jersey repeal of a 1962 statutory covenant between New York and New Jersey which limited the ability of the Port Authority of New York and New Jersey to subsidize rail passenger transportation from revenues and reserves pledged as security for consolidated bonds issued by the Port Authority. The United States Trust Company claimed the 1974 New Jersey repeal statute impaired the obligation of the State's contract with the bondholders in violation of the contract clause of the United States Constitution. The United States Supreme Court agreed, holding that it could sustain the repeal of the 1962 covenant only if the impairment was both reasonable and necessary to serve important public purposes. This standard cannot be met if more moderate alternative means are available to achieve the state's goals.

In the Lewiston-Auburn Airport situation, Chapter 178, P. & S.L. 1967 clearly, unequivocally and concretely expresses the limited uses for which the bond proceeds may be used with respect to the Lewiston-Auburn Airport. Those limitations have been incorporated in our contracts with the bondholders. No retrospective change in C. 178, P. & S.L. 1967, no matter how technical, can be made without creating an impairment in the State's contractual obligation. And while the State might legally impair those obligations, the impairment must be "reasonable and necessary to serving an important public purpose." In this instance, the State's only purpose would be the seeking of money realized as bond proceeds, as other alternatives are available to realize the runway reconstruction goals of the Lewiston-Auburn Airport. While the court recognized that a state can always find a use for extra money, especially when taxes do not have to be raised, such a desire does not meet the important public purpose standard.

If you have any further questions regarding this matter, please call me.

Sincerely yours,



ROBERT J. STOLT
Deputy Attorney General

RJS/ec