

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

January 22, 1980

Honorable Jerrold Speers
State Treasurer
State House
Augusta, Maine 04333

Dear Treasurer Speers:

This will respond to your opinion request regarding authorized but unissued State bonds. In view of the fact that the existence of unissued bonds may affect the State's credit rating, as well as future bond issues,^{1/} you have inquired as to how authorization to issue State bonds may be rescinded.

In your letter requesting our opinion, you indicated that the issuance of the bonds in question was authorized in accordance with the provisions of Article IX, section 14 of the Constitution of Maine, which provides:

" . . . whenever two-thirds of both Houses shall deem it necessary, by proper enactment ratified by a majority of the electors voting thereon at a general or special election, the Legislature may authorize the issuance of bonds on behalf of the State at such times and in such amounts and for such purposes as approved by such action" ^{2/}

1/ See 3 M.R.S.A. §551(1979).

2/ Art. IX, § 14, Me. Const., also provides, with respect to the issuance of bonds, that

"[w]henever ratification by the electors is essential to the validity of bonds to be issued on behalf of the State, the question submitted to the electors shall be accompanied by a statement setting forth the total amount of bonds of the State outstanding and unpaid, the total amount of bonds of the State authorized and unissued, and the total amount of bonds of the State contemplated to be issued if the enactment submitted to the electors be ratified."

Notwithstanding this mode of authorization, the most obvious way to eliminate the authorization of an approved bond issue is to repeal the authorizing statute. The constitutional right of the Legislature to repeal a statute which was initially enacted into law by popular referendum was specifically confirmed in Jones v. Maine State Highway Commission, Me., 238 A.2d 226, 230 (1968), which cited Baxter v. Waterville Sewerage District, 146 Me. 211, 215, 79 A.2d 585, 588 (1951) for the proposition that "[t]he legislature of Maine may enact any law of any character or on any subject, unless it is prohibited, either in express terms or by necessary implication by the Constitution of the United States or the Constitution of the State."

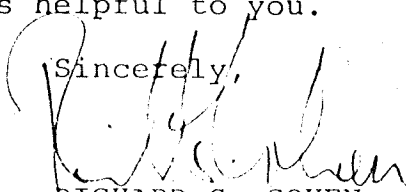
This office has consistently taken the position that the general rule stated in Baxter does not permit the Legislature to amend a statute which could only be enacted by referendum, as in the case of bond issues. See, e.g., Op. Atty. Gen., July 18, 1977 and Op. Atty. Gen., April 7, 1976. Cf. Opinion of the Justices, 159 Me. 209 (1963). The apparent rationale for this exception is that the constitutional requirement that a particular law be enacted by popular referendum necessarily implies that the same process must be followed if the law is to be amended to accomplish different purposes. Otherwise, the constitutional requirement could be circumvented by the Legislature.

Absent special circumstances of which we are not aware, this rationale does not apply to the repeal of a bond authorization. Article IX, sec. 14 of the Constitution of Maine does not require electoral ratification of all legislation relating to bonds; it only requires a vote of the electors when two-thirds of both Houses of the Legislature decide to increase the State debt by the issuance of bonds. This constitutional provision does not carry with it the implication that the same constitutional process must be followed if the Legislature decides that the originally authorized bonds are no longer needed. To conclude otherwise, one would have to construe a constitutionally approved bond issue as tantamount to a mandate by the electorate that the bonds must be issued in all events, whether or not actually needed as originally conceived. Obviously, such a construction of Article IX, sec. 14 would be both illogical and unworkable.

Accordingly, we conclude both from the holding of the Jones case and the rationale it adopts that as a general proposition the Legislature is free to rescind a prior authorization of unissued bonds by a simple legislative repeal. In view of this conclusion and in the absence of further knowledge about the particular bonds to which you refer, we have not explored whether any of the acts authorizing the sale of the bonds in question specify when or under what circumstances the authorization may expire by their own terms.

I hope this information is helpful to you.

Sincerely,



RICHARD S. COHEN
Attorney General

RSC:jg