

# MAINE STATE LEGISLATURE

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

January 29, 1981

Barbara Gottschalk  
Legislative Finance Office  
State House  
Augusta, Maine 04333

Dear Ms. Gottschalk:

This Office has again been asked to address the question of the use to which bond proceeds may be put when the project for which they were specifically earmarked is abandoned. More specifically, you have posed two questions relating to the use of already generated bond proceeds for improvements to the Auburn-Lewiston airport:

1. May the monies allocated to the Auburn-Lewiston airport be used for debt service for the entire bond issue, which includes projects at other airports, even though the Auburn-Lewiston project was never undertaken?
2. May the earmarked monies be used to "clear the approaches" of runway 17-35 if that clearing is unrelated to the extension of the runway?

We answer yes to the first question, and no to the second.

A brief review of the factual background of your questions will be helpful. In 1967, the Legislature passed, and the people approved at referendum, P. & S. L. 1967, Chapter 178, which authorized a \$2,837,500 bond issue for the improvement of local airports around the state. Included among the specific allocations contained in that Chapter was \$300,000 to "[a]cquire land, clear approaches, extend runway 17-35." This project was never undertaken, and the proceeds allocated to it have not been used.<sup>1/</sup>

<sup>1/</sup> In 1971, the Legislature amended Chapter 178 to provide for more general use of the Auburn-Lewiston funds, but this bill was defeated by the people at referendum. P. & S.L. 1971, c. 168.

Since that time, this Office has issued at least five opinions concluding that the money could not be used for any purposes other than those specified in Chapter 178. See Opinions of the Attorney General dated March 9, 1979; September 7, 1978; August 4, 1976; February 2, 1976; and February 15, 1972, copies of which are attached hereto for your information. We take this opportunity to reaffirm the general principle reached in those opinions. It is within the framework of that principle, namely that the Maine Constitution prohibits the use of bond proceeds for purposes other than those specified in the authorizing legislation, that we must examine your two questions.

The first question, regarding debt service, can be answered by looking to the language of Chapter 178 and the evident legislative intent. Chapter 178 says that:

Any unexpended balance remaining after the completion of all listed projects shall go into a debt service account to pay interests [sic] or principal on the issued bonds.

P. & S.L. 1967, c. 178, § 6

The problem is whether the Auburn-Lewiston funds can be so used even though that project was never "completed."

We think that the legislative intent underlying this specific language was that any unexpended monies arising from the bond issue could be used for debt service. The legislative history of Chapter 178 demonstrates the Legislature's concern at that time that some of the communities that were to receive funds might not be able to raise the matching funds required by the Act. See, e.g., II Me. Leg. Rec. 2462-63 (1967) (remarks of Reps. Roy and Scribner). To prevent these funds from being unused, the Legislature enacted the specific clause in § 6 of Chapter 178 which allowed moneys allocated to one community to be used by others. Id. (remarks of Rep. Scribner). We think a similar intent underlies the "debt service" clause.

In addition, it seems clear that approval of a bond issue at referendum does not necessarily give rise to a requirement that the project to be funded actually be undertaken. See Opinion of the Attorney General, June 20, 1980. Given that fact, as well as the specific language of Chapter 178, we cannot ascribe to the Legislature the intent that proceeds already raised for the abandoned project be totally unusable. For these reasons, we conclude that the monies originally earmarked for the Auburn-Lewiston Airport may be used for debt service on the bonds issued pursuant to Chapter 178.

We cannot glean such a broad legislative intent in regard to your second question. It is well settled by opinions of this

Office that bond proceeds earmarked for a certain project may be used only for the purposes of that project. We understand from inquiries in this area that the language used by the Legislature in reference to the Auburn-Lewiston Airport is most appropriately read as authorizing a single project whose goal was to extend runway 17-35. Thus, we believe that the acquisition of land and clearing of approaches was to be done only in conjunction with the extension of runway 17-35. Since it has been decided not to extend the runway, it is our opinion that Chapter 178 does not authorize the use of the bond proceeds to clear the approaches to the present runway.

We hope that this information addresses your concerns. If you have any further problems, please feel free to contact this Office.

Sincerely,

*Stephen L. Diamond*  
STEPHEN L. DIAMOND  
Deputy Attorney General

SLD:ks

Enclosures

The affairs of the school shall be controlled by a board of 12 trustees, as heretofore appointed, all residents of the State of Maine, who, together with their successors, shall be appointed by the Governor with the advice and consent to the Council. All trustees appointed after the effective date of this Act shall serve for terms of 5 years and until their successors are duly appointed and qualified. Any vacancy on the board shall be filled by appointment by the Governor with the advice and consent of the Council for the remainder of the unexpired term, but the majority of the board shall carry on business during the the existence of any vacancy on the board.

Sec. 2. **Effective date.** The effective date of this Act shall be January 1, 1967.

Effective October 7, 1967

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### Chapter 178

**AN ACT to Authorize General Fund Bond Issue in Amount of Two Million Eight Hundred and Thirty-Seven Thousand Five Hundred Dollars and to Appropriate Moneys for Construction, Extension and Improvement for Airports.**

**Preamble.** Two-thirds of both Houses of the Legislature deeming it necessary in accordance with Section 14 of Article IX of the Constitution to authorize the issuance of bonds on behalf of the State of Maine to provide construction, extension and improvement for airports.

*Be it enacted by the People of the State of Maine, as follows:*

Sec. 1. **Issue of bonds to provide for construction, extension and improvement for airports.** The Treasurer of State is authorized, under the direction of the Governor and Council, to issue from time to time serial coupon bonds in the name and behalf of the State to an amount not exceeding \$2,837,500 for the purpose of raising funds to provide for such construction, extension and improvement, as authorized by section 6. Said bonds shall be deemed a pledge of the faith and credit of the State. Said bonds shall not run for a longer period than 20 years from the date of the original issue thereof. Any issuance of bonds may contain a call feature at the discretion of the Treasurer of State with the approval of the Governor and Council.

Sec. 2. **Records of bonds issued to be kept by State Auditor and Treasurer.** The State Auditor shall keep an account of such bonds, showing the number and amount of each, the date of countersigning, the date when payable and the date of delivery thereof to the Treasurer of State, who shall keep an account of each bond, showing the number thereof, the name of the person to whom sold, the amount received for the same, the date of sale and the date when payable.

Sec. 3. **Sale, how negotiated; proceeds appropriated.** The Treasurer of State may negotiate the sale of such bonds by direction of the Governor and Council; but no such bond shall be loaned, pledged or hypothecated in behalf of the State. The proceeds of the sales of such bonds, which shall be held by the Treasurer of State and paid by him upon warrants drawn by the Governor and Council, are appropriated to be used solely for the purposes set forth in this Act. Any balance

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unexpended shall not lapse, but shall be carried forward from year to year to be used only for the purposes set forth herein.

**Sec. 4. Interest and debt retirement.** Interest due or accruing upon any bonds issued under this Act and all sums coming due for payment of bonds at maturity shall be paid by the Treasurer of State from any money in the treasury not otherwise appropriated.

**Sec. 5. Disbursement of bond proceeds.** The proceeds of such bonds shall be expended under the direction and supervision of the Aeronautics Commission.

**Sec. 6. Allocations from General Fund Bond Issue.** The funds allocated by this section for the following airports shall be expended for construction, extension and improvement of said airports:

Portland		\$1,625,000
Complete Part "B" of Phase I construction	\$ 800,000	
Phase II construction	825,000	
Presque Isle		100,000
Install electronic aids so as to improve dependability		
Auburn-Lewiston		350,000
Acquire land, clear approaches, extend runway 17-35	300,000	
Install localizer	50,000	
Bangor		82,500
Rehabilitate existing facilities for terminal building and rehabilitate apron		
Wiscasset		30,000
Extend runway to 3,400 feet		
Waterville		40,000
Construct new terminal building and apron		
Madawaska		30,000
Construct new airport		
Rumford		25,000
Construct new airport		
Rangeley		25,000
Rehabilitate, pave runway; install homing beacon		
Greenville		12,500
Rehabilitate principal runway; install homing beacon		
Millinocket		25,000
Repaving runway		
Old Town		9,500
Rehabilitate portion of existing apron; install homing beacon and REILS (lights)		

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Sanford		4,000
Install homing beacon, REILS		
Norridgewock		13,000
Night lighting system and Unicom radio station		
Machias		8,000
Extend runway and increase size of parking apron		
Rockland		120,000
Rehabilitate and extend the principal runway to 5,000 feet		
Augusta		322,000
Construct new administration building and repairs to road and auto parking areas		
Houlton		12,500
Resurfacing runway		
Aeronautics Commission		3,500
Discretionary Fund		
TOTAL		\$2,837,500

The amounts listed after each unit in this section are to be construed as guides and any one amount listed in the above schedule may be supplemented from amounts of any other project for which matching funds are not raised or available, with the approval of the Governor and Council, as long as the total expenditures of state money do not exceed the total amount of the bond issue and construction on each unit is performed as nearly as possible to that contemplated.

Any unexpended balance remaining after the completion of all listed projects shall go into a debt service account to pay interests or principal on the issued bonds.

It is the intent of the Legislature that any of the above projects eligible for matching funds shall have such matching funds available before any state money is expended on the project.

**Sec. 7. Contingent upon ratification of bond issue.** Sections 1 to 6 of this Act shall not become effective unless and until the people of the State of Maine shall have ratified the issuance of bonds as set forth in this Act.

**Sec. 8. Referendum for ratification.** The aldermen of cities, the selectmen of towns and the assessors of the several plantations of this State are empowered and directed to notify the inhabitants of their respective cities, towns and plantations to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of Senators and Representatives, at the next general or special state-wide election, to give in their votes upon the acceptance or rejection of the foregoing Act, and the question shall be:

"Shall a bond issue be ratified for the purposes set forth in 'An Act to Authorize General Fund Bond Issue in Amount of Two Million Eight Hundred and



Thirty-seven Thousand Five Hundred Dollars and to Appropriate Moneys for Construction, Extension and Improvement for Airports, passed by the 103rd Legislature?"

The inhabitants of said cities, towns and plantations shall indicate by a cross or check mark placed within a square upon their ballots their opinion of the same, those in favor of ratification voting "Yes" and those opposed to ratification voting "No" and the ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings, and return made to the office of the Secretary of State in the same manner as votes for Governor and Members of the Legislature, and the Governor and Council shall count the same and if it shall appear that a majority of the inhabitants voting on the question are in favor of said Act the Governor shall forthwith make known the fact by his proclamation, and the Act shall thereupon become effective in 30 days after the date of said proclamation.

Secretary of State shall prepare ballots. The Secretary of State shall prepare and furnish to the several cities, towns and plantations ballots and blank returns in conformity with the foregoing Act, accompanied by a copy thereof.

Effective October 7, 1967

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## Chapter 179

### AN ACT Continuing Governor's Advisory Council on the Status of Women.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment of the Legislature unless enacted as emergencies; and

Whereas, a Governor's Advisory Council on the Status of Women has been functioning under personal appointment; and

Whereas, such council has studied the various aspects of the status of women in Maine and the contributions our female population can and does make to the general well-being of the State; and

Whereas, the continuity of the work of this council will be interrupted and it will be unable to function adequately unless funds are made available to it; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of the State of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

*Be it enacted by the People of the State of Maine, as follows:*

Sec. 1. Advisory Council on the Status of Women; membership. The Governor shall appoint an Advisory Council on the Status of Women of 17 members, hereinafter in this Act called the council. In making appointments to the council, the Governor shall give consideration to citizens who are currently providing leadership in status of women programs on the state and local level.