

# MAINE STATE LEGISLATURE

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Letter  
81-75

JAMES E. TIERNEY  
ATTORNEY GENERAL



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

September 16, 1981

Honorable Rodney S. Quinn  
Secretary of State  
State House  
Augusta, Maine 04333

Dear Secretary Quinn:

This letter will confirm our oral advice to your office regarding the applicability of P.L. 1981, c. 167, to the bond issue questions which are to be presented to the voters on November 3, 1981.

Chapter 167 provides, inter alia, that every bond question submitted to the electors shall be accompanied by an estimate of the total debt service over the full life of the bonds proposed to be issued. The question has arisen as to whether this requirement applies to bond issues passed at the First Regular Session of the 110th Legislature and subject to approval by the people at the forthcoming statewide election. For the reasons stated below, it is our opinion that chapter 167 must be construed as inapplicable to these bond issues.

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1/ The bond issues were initially passed as P.&S.L. 1981, chapters 63, 64 and 65, and P.L. 1981, c. 528. Certain of these bond issues were subsequently amended at the First Special Session of the 110th Legislature. Thus, P.&S.L. 1981, c. 63 was amended by P.&S.L. 1981, c. 76, P.&S.L. 1981, c. 65 was amended by P.&S.L. 1981, c. 75, and P.L. 1981, c. 528 was amended by P.L. 1981, c. 530. These amendments have no effect on the question under consideration.

2/ In our opinion to you of August 6, 1981, we interpreted chapter 167 with respect to the location of the debt service estimates on the ballot. Although we did not address the effective date of the law, we recognize that our prior letter might be read to reflect an assumption that chapter 167 would apply in the forthcoming election. In light of the conclusion reached herein, no such inference should be drawn from our earlier opinion.

As with other nonemergency measures enacted at the First Regular Session, chapter 167 takes effect on September 18, 1981. Thus, the law becomes operative after the constitutionally mandated process for bond ratification has commenced but before it has been completed. More specifically, the effective date of chapter 167 falls between the legislative approval of the bond issues and their submission to the voters. It is this sequence of events which gives rise to the question under consideration here.

To resolve this question, it is first necessary to ascertain exactly what chapter 167 requires. The effect of chapter 167 is to add to Maine's general laws 3 M.R.S.A. §552 which, when it becomes effective, will read in its entirety as follows:

§552. Bond issues to include statement of estimated total debt service

Every proposed bond issue passed by the Legislature shall include an estimate of the total debt service, including interest, for that bond over the full life of the bond.

Whenever ratification by the electors of the State is essential to the validity of bonds to be issued on behalf of the State, pursuant to the Constitution of Maine, Article IX, Section 14, the question submitted to the electors shall be accompanied by a statement setting forth that estimate of the total debt service for the bond.

It is clear that §552 establishes two new requirements in connection with bond issues. First, every proposed bond issue passed by the Legislature must include an estimate of the total debt service over the full life of the bonds. Second, "that estimate" must accompany the question submitted to the electors.

For purposes of the pending problem, the critical question is the meaning of the reference in the second paragraph of §552 to "that estimate of the total debt service for the bond." (Emphasis added). In construing this phrase, we must be guided by the directive of the Law Court that when "the meaning of . . . [statutory] language is plain, we must interpret the statute to mean exactly what it says." Concord Gen. Mut. Ins. v. Patrons-Oxford Mut., Me., 411 A.2d 1017, 1020 (1980); see also Paradis v. Webber Hospital, Me., 409 A.2d 672 (1979). Applying this "plain meaning" rule to the second paragraph of §552, there is only one possible interpretation of that provision, namely, that it is the debt service estimate included in the bond issue passed by the Legislature which is to accompany the question submitted to the electors.

In light of the above interpretation, we believe that the second paragraph of §552 must be deemed inapplicable to the bond issues passed at the First Regular Session. The reason lies in the simple fact that these bond issues do not contain debt service estimates. With respect to the forthcoming election, it is therefore impossible to comply with the requirements of §552.<sup>3/</sup> A conclusion that the bond questions on the November ballot must be accompanied by non-existent debt service estimates would obviously lead to an absurd result. Since the Legislature is presumed not to intend such a result, State v. Larrabee, 156 Me. 115, 121 (1960), we are compelled to conclude that §552 was not intended to apply to the pending bond questions.

Having expressed our legal opinion, we think it appropriate to note that the Governor or the Legislature may believe that the policies underlying P.L. 1981, c. 167 should be made effective immediately. Given this possibility, we shall briefly suggest some means whereby the voters might be informed of the debt service costs of the bond issues to be submitted to them on November 3, 1981.

The most obvious alternative available to the Legislature would be the enactment of emergency legislation, possibly at the special session scheduled for September 25, 1981, expressly providing that the debt service estimates are to be included on the November ballot. It would be necessary for this legislation either to specify the estimates or to delegate this task to a particular state official.<sup>4/</sup>

Another alternative, also requiring the enactment of emergency legislation, would be to mandate that, for the purposes of the November, 1981 election, the desired information be made known to the public through some means other than by inclusion on the ballot.

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<sup>3/</sup> It is relevant to note that chapter 167 was approved by the Governor on April 17, 1981, while the first of the bond issues was approved on June 23, 1981. Since the passage of the debt service requirement thus preceded the passage of the bond issues by more than two months, the absence of the debt service estimates cannot be ascribed to the sequence in which the Legislature considered these matters.

<sup>4/</sup> We are not in a position to assess the logistical problems which might result from such legislation. Since the Secretary of State is responsible for the preparation of the ballots, such an assessment is better made by your office.

For example, the Legislature could require that a designated official prepare an addendum to the "intent and content" statement, see 1 M.R.S.A. §353, which would contain a debt service estimate for each bond issue. The Legislature could also provide that this "debt service statement" would be disseminated in a particular manner, such as by publication in the State's daily newspapers and/or by posting at the polling places.

Finally, we should point out that there is at least an argument that the purpose of chapter 167 could be implemented without further legislation. That argument would be predicated on 5 M.R.S.A. §152 which provides as follows:

§152 Ratification of bond issue; signed statement

In accordance with the Constitution of Maine, Article IX, section 14, the Treasurer of State shall prepare a signed statement to accompany any question submitted to the electors for ratification of a bond issue 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 should be ratified. The Treasurer of State shall also set forth in that statement an estimate of costs involved, including explanation of, based on such factors as interest rates which may vary, the interest cost contemplated to be paid on the amount to be issued, the total cost of principal and interest that will be paid at maturity and any other substantive explanatory information relating to the debt of the State as he may deem appropriate.

A careful reading of the second sentence of §152 suggests two possible grounds for concluding that the Treasurer could include in his statement the debt service<sup>5/</sup> for each particular bond issue. The mandatory language in that sentence, requiring the Treasurer to "set forth . . . an estimate of the costs involved . . .<sup>6/</sup>" could be read as meaning the costs for each separate bond issue<sup>6/</sup> as opposed to the aggregate costs for all the issues subject to referendum. Alternatively, the optional language in that sentence, authorizing the Treasurer to include "any other substantive explanatory information relating to the debt of the State as he may deem appropriate," could be construed to allow the same result but at the discretion of the Treasurer.

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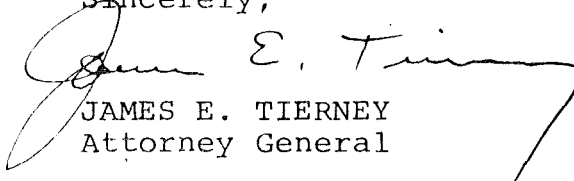
5/ We are advised by the Treasurer's office that "debt service" includes principal and interest payments and the cost of issuing the bonds. Thus, debt service would appear to encompass the total cost of the bond issue.

6/ It is possible that the reference to costs in § 152 covers only principal and interest costs. We assume, however, that these costs represent the lion's share of debt service, with the incidental costs of issuing the bonds being comparatively small.

In the final analysis, we are reluctant to recommend reliance on §152 to implement the objective of chapter 167. If §152 were construed either to mandate or to allow a statement of total costs for each bond issue, then a conflict would appear to exist between that provision and chapter 167. More specifically, the Legislature and the Treasurer would both be authorized to estimate the cost of the issue, and both estimates, whether or not the same, would appear on the ballot. This result would conflict with the principle that statutes on the same subject should be read to "avoid such inconsistency whenever there is available, as here, an alternative reading which leaves reasonable, and fair, operative scope to both enactments." Bernard v. Cives Corp., Me. 395 A.2d 1141, 1148-49 (1978). In short, the enactment of chapter 167 casts doubt on the proposition that the Treasurer already had the responsibility which the Legislature has now delegated to itself.<sup>7/</sup>

For the reasons stated above, if the Governor or the Legislature wishes to make the policy underlying P.L. 1981, c. 167 effective for the bond issue questions to be presented to the voters on November 3, 1981, then expeditious action by the Legislature would be the preferable approach.<sup>8/</sup> The Department of the Attorney General stands ready to provide any further assistance which may be requested of it on this matter.

Sincerely,



JAMES E. TIERNEY  
Attorney General

JET:jg

cc: Honorable Joseph E. Brennan, Governor  
Honorable Samuel Shapiro, Treasurer  
Legislative Council

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<sup>7/</sup> Furthermore, the argument that the Treasurer is required to include the costs of each bond issue conflicts with the prior administrative practice of setting forth the aggregate principal and interest costs for all of the bond issues.

<sup>8/</sup> At an appropriate time, the Legislature may wish to consolidate the statutory provisions detailing the information which is to accompany bond questions. That subject is now addressed by 3 M.R.S.A. §552, 5 M.R.S.A. §152 and 21 M.R.S.A. §702(5-A), as well as by art. IX, §14 of the Maine Constitution. By consolidating the statutory provisions, certain problems of interpretation might be eliminated.