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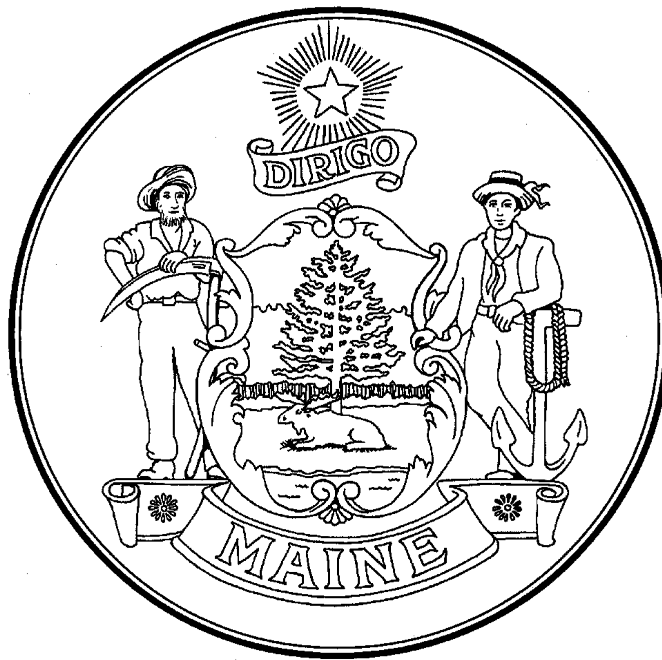

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JAMES E. TIERNEY
ATTORNEY GENERAL

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

October 27, 1981

Honorable Judy Kany
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Kany:

This will respond to your inquiry concerning Legislative Document No. 522, a direct initiative entitled "AN ACT to Create the Maine Energy Commission." Your question may be stated as follows: if L.D. 522 is approved by the voters, would the Maine Energy Commission have the authority, under 35 M.R.S.A § 19, to issue revenue bonds without further authorization by either the Legislature or the people, or both?

In considering this matter, we have decided to expand the scope of our opinion to encompass the Commission's authority not only with respect to revenue bonds, but also with respect to general obligation bonds, grants, loans and gifts, and appropriations. Two factors prompted this decision. First, in addition to revenue bonds, 35 M.R.S.A. § 19 specifically refers to these other means of raising revenue, and the inquiries to my Office indicate that the same questions exist in these areas. Second, a determination of the bill's intent with respect to these other revenue raising devices will assist in resolving your specific inquiry.[1/]

1/ Certain matters of form should be explained at the outset. First, references to the "Commission" mean the Maine Energy Commission. Second, except when expressly stated to the contrary, references to sections of Title 35 are to those sections as they will read if L.D. 522 is enacted. Finally, for reasons of style, our discussion is frequently presented as if L.D. 522 were already enacted.

I. Explanation of the Questions.

Preliminarily, it is necessary to briefly describe certain provisions of L.D. 522 in order to state in an understandable fashion the issues we intend to address. The applicable provisions are 35 M.R.S.A. §§ 18 and 19.[2]

Section 18 requires the Commission to transmit biennially to the Governor and the Legislature a comprehensive "state energy budget." The budget is to be based, in part, on certain forecasts of energy supply and demand. Paraphrasing subsection 1 of section 18, the budget is to consist of the following: a projection of energy demand; plans for meeting the demand and for energy conservation; identification of expected increases in the State's capacity to generate or transmit electrical energy or natural gas, along with the environmental, health and financial costs of these additions; a report on the budget's impact on the elderly and low income populations; recommendations for legislative and administrative actions; and an explanation of the major assumptions and methods used in constructing the budget. As to procedure, subsection 3 provides that the budget is to be submitted by the Commission to the Legislature solely for the latter's approval or disapproval. Furthermore, unless the budget is disapproved by a vote of 2/3 or more of each House of the Legislature within 60 calendar days of its submission, it shall be deemed adopted.

Section 19 establishes an Energy Development Fund, to be administered by the Commission and to be used for financing projects within the guidelines set forth in the state energy budget. The provision expressly states that the fund will consist of moneys raised from the following sources: general obligation bonds; revenue bonds issued by the Commission and by others; grants, loans and gifts; and appropriations.[3] The section does not, however, provide any specific guidance on the procedures for raising and expending the money.

2/ The full text of these sections appears in Appendix A.

3/ In L.D. 522, these sources appear as follows: "A. General obligation bonds; B. Revenue bonds issued by the commission and by others; C. Grants, loans and gifts; or D. Appropriations." (Emphasis added.) Despite the use of the word "or," we assume that the fund may consist of money from all of these sources, and we read the section in that fashion. See 1 M.R.S.A. § 71(2).

The provisions described above have generated questions about the authority of the Commission to raise money either through unilateral action or through the state energy budget process. We shall address these questions with respect to each of the means for raising revenues mentioned in the bill, taking them in the following order: 1) general obligation bonds; 2) grants, loans and gifts; 3) appropriations; and 4) revenue bonds issued by the Commission and by others.

II. Discussion.

A. General Obligation Bonds.

It is our opinion that the enactment of L.D. 522 would not empower the Commission to issue, or cause to be issued, general obligation bonds either through some unilateral Commission action or through the state energy budget process. This conclusion is mandated by art. IX, § 14 of the Maine Constitution.

Pursuant to art. IX, § 14, the debt of the State may not exceed two million dollars except under the limited circumstances specified in that provision. With respect to general obligation bonds, the sole applicable exception is for bond issues approved by two-thirds of both Houses of the Legislature and by a majority of the electors voting thereon. It is clear that this constitutional mandate would not be met if the Commission were deemed to have the power to cause the issuance of general obligation bonds either by means of some unilateral action under 35 M.R.S.A. § 19 or by their inclusion in the state energy budget under 35 M.R.S.A. § 18.

In construing a statute, "the fact that one among alternative constructions would involve serious constitutional difficulties is reason to reject that interpretation in favor of another." 2A Sutherland Statutory Construction § 45.11 (4th ed. 1973); see also State v. Davenport, Me., 326 A.2d 1 (1974). Since a statute empowering the Commission to issue general obligation bonds would violate the Maine Constitution, we read 35 M.R.S.A. § 19 not as authorizing their issuance by the Commission but rather as identifying a potential source of funds which may be included in the Energy Development Fund. For the same reason, the procedure established in 35 M.R.S.A. § 18 for approval of the state energy budget should not be interpreted as applicable to the authorization of these bonds. In short, the enactment of L.D. 522 would not alter the

constitutionally mandated process for increasing the State debt limit and thus would not give the Commission any power with respect to the issuance of general obligation bonds.[4]

B. Grants, Loans and Gifts.

If L.D. 522 is enacted, the Commission would have express authority to accept grants and gifts under 35 M.R.S.A. § 1(5). That subsection reads as follows:

> 5. Acceptance of moneys. The commission may apply for and accept on behalf of the State any goods, services or funds, including <u>grants</u>, bequests, <u>gifts</u> or contributions from any person, corporation or government, including the Government of the United States. (Emphasis added.)

Although the above provision is silent on the disposition of the grants and gifts, we are concerned here only with the power of the Commission to raise or accept money. Since that power is expressly conferred by 35 M.R.S.A. § 1(5) with respect to grants and gifts, we need not determine whether it also exists under 35 M.R.S.A. §§ 18 and 19.

Regarding loans, the situation is very different, insofar as art. IX, § 14 of the Maine Constitution again comes into play. The debt limit established by that provision applies to all debts and liabilities of the State, not solely those which are incurred through general obligation bonds. <u>See</u> <u>Opinion of the Justices</u>, 146 Me. 185 (1951). Thus, the same constitutional impediment generally precludes an interpretation of L.D. 522 which would give the Commission the power to borrow on behalf of the State.

4/ It is possible to comply with art. IX, § 14 by interpreting L.D. 522 to mean that the Commission is authorized to issue general obligation bonds subject to an implicit requirement that the constitutionally. mandated process also be followed. As a practical matter, the same result would ensue, in that the bonds would still have to be approved by the Legislature and the voters. Finally, we recognize that the constitutional impediment might disappear if the debt of the State ever fell below two million dollars. Given the extremely remote nature of that possibility, we need only note that we would still construe L.D. 522 in the same fashion although for reasons similar to those set forth in our discussion of revenue bonds.

Notwithstanding art. IX, § 14, it is still constitutionally possible to construe the reference to loans in L.D. 522 to allow the Commission to engage in tax anticipation borrowing, either through unilateral action or through the energy budget procedure. Such a construction would be based on the exception from the debt limit for "temporary loans to be paid out of money raised by taxation during the fiscal year in which they are made." Me. Const. art. IX, § 14.

We find the proposition that L.D. 522 would empower the Commission to negotiate tax anticipation loans unpersuasive. Apart from the issue of whether such an interpretation of the bill would result in an unconstitutional delegation of legislative power,[5] the conclusion that the Commission has this borrowing authority conflicts with our view of the purposes of 35 M.R.S.A. §§ 18 and 19, as set out in our discussion of revenue bonds. There is, however, a more specific reason for rejecting this conclusion. The Legislature has already delegated to the Governor and the Treasurer the authority to negotiate tax anticipation loans. Thus, the second paragraph of 5 M.R.S.A. § 150 provides:

> The Treasurer of State, with the approval of the Governor, may negotiate a temporary loan or loans in anticipation of taxes levied for that fiscal year but not exceeding a total of $25,000,000. The Treasurer of State is directed to pay such loan or loans in anticipation of taxes during such year and there is appropriated for any year in which the Treasurer of State and the Governor deem it necessary to borrow in anticipation of taxes the sum of $25,000,000.

Given the specific language of § 150, we think it would be unreasonable to conclude that the mere references in L.D. 522 to "loans" and "state energy budget" are intended to convey the same power on the Commission, without even the restriction as

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5/ Absent a specific appropriation, _see_ 5 M.R.S.A. § 150, the power to borrow would appear to require the power to appropriate, and possibly even tax, in order that the money be available to repay the loans. As discussed in the ensuing section, we do not believe the Legislature can delegate its power over appropriations.

to amount found in § 150. Finally, the fact that art. IX, § 14 sets a ceiling on tax anticipation borrowing in any fiscal year[6] affords another ground for concluding that L.D. 522 does not contemplate that the Commission will share this authority with the Governor and the Treasurer, for such an arrangement would create an ever present danger that the constitutional ceiling would be exceeded.

To summarize, we believe the reference to loans in 35 M.R.S.A. § 19 must be read as a term of identification and not as a term of authorization. In other words, the language identifies a source of money for the Energy Development Fund but does not authorize the Commission to raise money from that source. For the same reasons, we do not believe that the state energy budget procedure could be utilized to authorize loans.

C. Appropriations.

A resolution of the question of whether L.D. 522 would permit the Commission to make appropriations,[7] either unilaterally or through the state energy budget procedure, requires a discussion of the constitutional limits on the Legislature's ability to delegate this power. Although there appears to be little Maine precedent of direct relevance, the general rule has been articulated by the Supreme Court of Louisiana:

> That the appropriating of the State's funds is a legislative function is fundamental. It is so recognized in the jurisprudence of all of the States and by all of the law writers on the subject.

Carso V. Board of Liquidation of State Debt, 17 So.2d 358, 363 (La. 1944). Quoting from Colbert v. State, 39 So. 65, 66

6/ Tax anticipation borrowing may not be greater than either 10% of all the moneys appropriated, authorized and allocated by the Legislture or 1% of the total valuation of the State of Maine, whichever is lesser. Me. Const. art. IX, §14.

7/ Although not defined in the bill, we assume the term "appropriation" to mean the act of setting apart "a specified portion of the public revenue or of the money in the public treasury, to be applied to some general object of governmental expenditure, or to some individual purchase or expense." Black's Law Dictionary. With respect to the Commission, appropriations would presumably be from the General Fund.

(Miss. 1905), the court added that "'the control of the purse strings of government. . . is the supreme legislative prerogative, indispensable to the independence and integrity of the Legislature, and not to be surrendered or abridged, save by the Constitution itself, without disturbing the balance of the system and endangering the liberties of the people.'" Carso v. Board of Liquidation of State Debt, supra.

Of more specific relevance is art. V, pt. 4, § 4 of the Maine Constitution, which provides that "[n]o money shall be drawn from the treasury, except in consequence of appropriations or allocations by law." In construing a virtually identical provision in the Idaho Constitution, the Supreme Court of that state defined appropriation as:

> (1) authority from the legislature, (2) expressly given, (3) in legal form, (4) to proper officers, (5) to pay from public monies, (6) a specified sum, and no more, and (7) for a specified purpose and no other.

Leonardson v. Moon, 451 P.2d 542, 550 (Idaho 1969) (Emphasis added). The Supreme Court of Arizona read a similar provision in that State's Constitution to mean, inter alia, that a legislative appropriation "must be specific as to a maximum amount and cannot be left indefinite and uncertain in this regard." Crane v. Frohmiller, 45 P.2d 955, 958 (Ariz. 1935).

The fact that the language in 35 M.R.S.A. § 19 that "[t]he fund will consist of moneys raised from. . . [a]ppropriations . . ." contains no limits as to amount persuades us that to read the section to authorize the Commission to appropriate money would result in an unconstitutional delegation of legislative power. Since, as stated above, a statute must be construed to effect a constitutional end whenever possible, it is our opinion that the language quoted above must be interpreted as identifying a potential source of money for the Energy Development Fund and not as giving the Commission the authority to raise money from that source.

It might appear at first blush that the delegation problem does not exist with respect to the state energy budget procedure, in that the Legislature could disapprove an appropriation for the Commission by a vote of 2/3 or more of each House. The argument that this right of disapproval means that the Legislature has not surrendered its appropriation power does not withstand close scrutiny. As explained by the Justices of the Supreme Judicial Court, "[t]he legislative process. . . is composed of concurring action by both Houses of the Legislature with consideration by the Chief Executive . . . . " Opinion of the Justices, Me., 231 A.2d 617, 619 (1967). See also 1 Cooley's Constitutional Limitations 320-21 (8th ed. 1927). Even if the disapproval procedure established in 35

M.R.S.A. § 18 could be viewed as "concurring action by both Houses," a point which is subject to considerable doubt, the section completely excludes participation by the Governor. That the Governor has a constitutionally mandated role in appropriations appears to have been recognized by the Justices of the Supreme Judicial Court:

> . . . When, however, the Legislature attempts to authorize or direct the payment of money for other than legislative expense such appropriation or payment is one of public concern and one which can be effected only by an act or resolve of the Legislature passed as a law by both branches thereof and submitted to the Executive for his executive approval in accordance with the Constitution.

Opinion of the Justices, 148 Me. 528, 531 (1953). In short, interpreting the state energy budget procedure as a potential vehicle for Commission appropriations encounters the same constitutional objections as would exist with a direct and unchecked delegation of the power to appropriate.8/

For the reasons stated above, then, it is our opinion that the enactment of L.D. 522 would not empower the Commission to make appropriations, either through unilateral action or through the state energy budget procedure.

8/ There are two other arguments which support the conclusion that 35 M.R.S.A. § 18 is not intended to create a procedure for making appropriations. First, the bill's definition of the state energy budget does not appear to contemplate items such as appropriations, a point which will be discussed in more detail in the section on revenue bonds. Second, the general laws establish a budgetary procedure, see 5 M.R.S.A. c. 149, which applies to "all departments and other agencies of State Government." 5 M.R.S.A. § 1665. If 35 M.R.S.A. § 18 creates a different process for the Commission, then the general laws on this subject are impliedly amended by L.D. 522. Since amendments by implication will not be found to exist except when provisions are so inconsistent that they cannot stand together, Inman v. Willinski, 144 Me. 116, 123 (1949), 35 M.R.S.A. § 18 should not be construed to impliedly amend 5 M.R.S.A. c. 149, particularly in the absence of express language requiring that § 18 be interpreted to include appropriations.

D. Revenue Bonds Issued by the Commission and by Others.

The question of the Commission's authority under L.D. 522 to issue revenue bonds [9] is somewhat less clear than the issues which have already been considered. Unlike the case with general obligation bonds, loans and appropriations, there are no constitutional doctrines which clearly dictate how the bill must be read. Accordingly, the Commission's power to issue revenue bonds must be determined largely from the language of the bill and from a comparison of that language with analogous legislative enactments.

The first question is whether the phrase in 35 M.R.S.A. § 19, "[t]he fund will consist of moneys raised from. . . [r]evenue bonds issued by the commission and by others. . . ," should be construed as authorizing the issuance of these bonds or solely as identifying a potential source of money for the Energy Development Fund. While the vague language of the bill creates doubt as to how this question should be resolved, we are of the opinion that the latter interpretation is correct.

It is our view that the phrase, "the fund will consist of moneys raised from . . . [r]evenue bonds issued by the commission and by others," does not constitute authorization to issue bonds. That the quoted language should not be so construed is demonstrated by a comparison of L.D. 522 with statutes already enacted by the Legislature. For example, 10 M.R.S.A. § 1041(2) states that the "Maine Guarantee Authority may. . . [i]ssue revenue obligation securities. . . . "

9/ L.D. 522 does not define revenue bonds. According to a treatise on the subject, "[r]evenue bonds are usually defined as those bonds, the debt service of which is payable solely from the revenues or earnings derived from the operation of a revenue producing enterprise or facility constructed or acquired with the proceeds of such bonds." L. Chermat, The Law of Revenue Bonds 62 (1954). For purposes of this opinion, we must assume that revenue bonds would not be debts or liabilities of the State.

Similarly, 30 M.R.S.A. § 4601-A(1)(H) provides that the Maine State Housing Authority "shall have the powers and duties to . . . [i]ssue revenue bonds. . . . "10/ These statutes reveal that when the Legislature intends to authorize the issuance of revenue bonds, it does so in clear and unambiguous language.

The brief nature of the reference in section 19 to revenue bonds points to the same result. As a general practice, legislative authorization to issue these securities is accompanied by language detailing the nature and extent of the power. See, e.g., 10 M.R.S.A. § 1044. By contrast, L.D. 522 contains nothing more than a single reference to the term.11/ Even more significant is the fact that the reference is to "revenue bonds issued by the commission and by others." To read the language as words of authorization would presumably mean that the authorization extends to unidentified "others," a result which we do not believe could have been intended.

10/ See also 20 M.R.S.A. § 3506(6) ("The [Maine School Building] [A]uthority is authorized and empowered. . . [t]o issue revenue bonds. . . ."); 22 M.R.S.A. § 2055(6) (". . . The [Maine Health [Facilities] [A]uthority is authorized and empowered. . . [t]o issue bonds. . . . "); 30 M.R.S.A. § 4810 ("The [urban renewal] authority shall have power to issue bonds. . . . "); and 30 M.R.S.A. § 5331(1) (". . . [T]he municipal officers of any municipality are authorized to provide by resolution. . . for the issuance of revenue obligation securities. . . . ").

11/ We find the absence of language clearly stating that the bonds would not be debts of the State to be particularly significant, in light of the fact that the Law Court decision upholding the constitutionality of legislation authorizing the issuance of revenue bonds relied heavily on the presence of such language in the enabling statute. See Maine State Housing Authority v. Depositors Trust Co., Me., 278 A.2d 699, 706-707 (1971).

The context of the reference also suggests that its purpose is merely to identify another possible source of money for the Energy Development Fund. In the previous sections of this opinion, we have concluded that § 19 could not have been intended to authorize the Commission to issue general obligation bonds, borrow money or make appropriations.[12] It is logical to assume that the intent of the section is the same for all of the revenue raising devices enumerated therein, and thus, the same conclusion would apply to revenue bonds.

Finally, an analysis of the Maine Energy Resources Development Fund, which is currently administered by the Director of the Office of Energy Resources, sheds some light on this matter. Such an analysis is particularly relevant given the fact that one of the purposes of L.D. 522 is to "[c]onsolidate the functions and offices of the Public Utilities Commission and the Office of Energy Resources into one new agency. . . . " Section 1(2) of L.D. 522. Furthermore, enactment of L.D. 522 would abolish the Maine Energy Resources Development Fund by repealing 5 M.R.S.A. § 5006, and thus, it is reasonable to assume that the Energy Development Fund in § 19 is designed, at least in part, as a replacement. Against this background, we believe that the absence of authority to issue revenue bonds for the currently existing fund lends support to the proposition that the same conclusion holds true for its replacement.

To summarize, we are of the opinion that the phrase, "the fund will consist of moneys raised from. . . revenue bonds issued by the commission and by others," is intended to identify a source of money for the fund and not to authorize the issuance of bonds. We recognize that the language "issued by the commission" could be invoked in favor of the contrary conclusion. In light of the arguments advanced above, however, we think it more reasonable to read that language as designed to more clearly identify the source of the money rather than as a term of authorization.

12/ Although we did find authority to accept grants and gifts, that authority derives from 35 M.R.S.A. § 1(5) and not from 35 M.R.S.A. § 19.

Having determined that § 19 does not include the power to issue revenue bonds, we are left with the question of whether that power could be acquired through the state energy budget procedure. For purposes of this opinion, the resolution of that question turns upon the meaning of the state energy budget, as established by 35 M.R.S.A. § 18.

The major problem in construing § 18 stems from an ambiguity inherent in the provision. More specifically, there appears to be a conflict between the use of the term "budget" and the definition or description of the budget as set forth in the section.

On the one hand, a commonly accepted meaning of a budget, at least in the context of government, would be a document containing proposed receipts and expenditures, which, when approved in the manner required by law, constitutes authorization to receive and expend funds. In this sense, an "adopted" budget would authorize certain acts, principally of a financial nature, and thus, could be viewed as a mechanism for authorizing the issuance of revenue bonds. On the other hand, § 18 enumerates, albeit not in an inclusive fashion, the components of the state energy budget. These components, along with the role of the "budget" in the statutory scheme, suggest a document designed to serve as a master plan or a blueprint establishing standards to which certain official actions or decisions, already authorized by law, would have to conform. Under this interpretation, the state energy budget could not be used to grant the Commission any powers which it did not already possess; hence, it could not confer the power to issue revenue bonds. While we cannot say that the matter is beyond dispute, we believe a court would adopt the latter interpretation for the reasons set out below.

It is well established that the Legislature may define a term for the purposes of a statutory scheme and that its definition is of binding effect. 2A Sutherland Statutory Construction § 47.07 (4th ed. 1973). Although phrased in terms of what the budget shall include, the language of 35 M.R.S.A. § 18(1) essentially defines the state energy budget.[13/] That subsection reads as follows:

> 1. Budget. Beginning January 15th, 1984, and every 2 years thereafter, the commission shall transmit to the Governor and the Legislature a comprehensive state energy budget. The budget shall include, but not necessarily be limited to, the following:

13/ See 2A Sutherland Statutory Construction § 47.07 (4th ed. 1973).

A. Projection of the demand for electrical energy and natural gas in the State for the succeeding 5, 10 and 15-year periods;

B. A plan for the securing of sufficient supply to meet the projected demand, with maximum feasible utilization of renewable resources, including but not limited to solar, low head hydro, wind, peat, biomass and tidal resources; cogeneration technologies; and imported power;

C. A plan for the encouragement of conservation of energy by residential, commerical, governmental and industrial users;

D. Identification of any expected increases to the State's capacity to generate or transmit electrical energy and natural gas, the costs of the additions and an evaluation of their impact on the state's environment, the health and safety of the population and the short and long-term cost of the ratepayers;

E. A report on the impact of the state energy budget on the state's elderly and low income populations;

F. Recommendation to the Governor and the Legislature for any administrative or legislative actions which in the view of the commission are necessary to support the state energy budget or otherwise carry out the intent of this section; and

G. An explanation of the major assumptions and methods used in constructing the state energy budget.

Without analyzing each component of the budget, we would observe that none even purports to grant approval for any specific action by the Commission. Rather, when taken as a whole, these components suggest a document the principal

purposes of which are to assess the State's energy needs and resources and to formulate guidelines to be followed in meeting those needs. The conclusion that the budget is not intended as a mechanism for authorizing specific acts is reinforced by the fact that it is to contain a "[r]ecommendation. . . for any administrative or legislative actions which in the view of the commission are necessary to support the state energy budget or otherwise carry out the intent of this section." 35 M.R.S.A. § 18(2)(F). That it was deemed necessary to include this component supports the proposition that the budget is to establish a general energy plan along with guidelines of presumably binding effect, but that any additional authority needed to implement this plan must be obtained through the customary administrative and legislative processes.[14]

The role established for the energy budget in the overall statutory scheme is consistent with the conclusion advanced above. Thus, the budget appears in the bill in connection with the Commission functions set out below:

> The [Energy Development] [F]und shall be used for financing projects within the guidelines set forth in the state energy budget. 35 M.R.S.A. § 19(2).
>
> In determining just and reasonable rates, the commission shall provide revenues to the utility as may be required to perform its public service, consistent with the state energy budget and to attract capital on just and reasonable terms. 35 M.R.S.A. § 51 (3rd sentence).
>
> The commission shall order electric companies and gas companies to submit specific rate design proposals and related programs which are consistent with the state energy budget at all electric company and gas company rate-making proceedings pending before the commission. 35 M.R.S.A. § 93 (first sentence).

In addition, under 35 M.R.S.A. § 13-A, a proposal to erect certain generating facilities, to purchase an ownership

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14/ It is interesting to note that in the second sentence of 35 M.R.S.A. § 18(3), the word "plan" is substituted for the word "budget." While this may have been the result of inadvertence, it is possible that it reflects the drafters' understanding of the intended nature of the document.

interest in any electric generating plant outside the State or to make a long-term purchase or sale of energy or capacity would have to be "consistent with the state energy budget" in order for the Commission to issue a certificate of public convenience and necessity. In each case, the energy budget operates as a set of guidelines to which a Commission action or decision, already authorized by law, must conform. In no instance does the budget appear to confer any additional authority.[15/]

One final factor militates in favor of our general characterization of the energy budget as essentially a set of guidelines embodying a state energy policy. Given the limited role of the Legislature under 35 M.R.S.A. § 18, it is clear that substantial authority to determine the state energy budget has been delegated to the Commission. If that budget could be used to confer specific powers on the Commission, the Commission could in essence establish its own powers, a result which would raise substantial questions about the constitutionality of the delegation.

Having offered a general characterization of the state energy budget, our views on the specific matter of revenue bonds may be stated in rather summary fashion. First, there is no language in 35 M.R.S.A. § 18(1) which we believe could be read as expressly authorizing the inclusion in the energy budget of the power to issue revenue securities. Second, in light of our understanding of the purposes of the budget, it is our opinion that this authority is not implicitly encompassed within any of the components set out in § 18. Third, while the definition of the energy budget is not intended to be all-inclusive and thus the budget could contain items other than those listed in the bill, it is well established that any

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15/ For purposes of this opinion, our analysis of the state energy budget has been from the perspective of the Commission's authority and not from the vantage point of its effect on public utilities. Our silence on this latter subject should not be taken to mean that this effect will be insignificant.

other item would have to be similar in nature to those already enumerated in § 18.[16] Since we have construed the enumerated components as not encompassing grants of additional authority to the Commission, at least in the fiscal area, the same would have to be true for any other items. Thus, we do not believe that the Commission could acquire, through the energy budget procedure, the power to issue revenue bonds.

16/ Where general words follow specific words in an enumeration describing the legal subject, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words. Where the opposite sequence is found, i.e., specific words following a general, the doctrine is equally applicable, restricting application of the general term to things that are similar to those enumerated.

2A Sutherland Statutory Construction § 47.17 (4th ed. 1973). See also State v. Lerman, Me., 302 A.2d 572 (1973).

III. Conclusions.

The conclusions reached in this opinion, as to the consequences of the enactment of L.D. 522, may be summarized as follows:

1. The Commission would not be authorized to issue, or cause to be issued, general obligation bonds, nor could such authority be acquired through the state energy budget procedure. The issuance of such bonds would have to follow the procedure set out in art. IX, § 14 of the Maine Constitution.

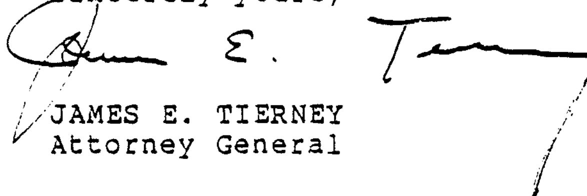
2. The Commission would not be authorized to borrow money, nor could such authority be conferred through the state energy budget procedure. The Commission would have the authority to accept grants and gifts. We express no opinion, however, on its power to determine how those grants and gifts would be expended since that could involve an infinite number of different factual situations.

3. The Commission would not be authorized to make appropriations, nor could appropriations be made through the state energy budget procedure.

4. The Commission would not be authorized to issue revenue bonds, nor could such authority be acquired through the state energy procedure.

I hope this information is helpful.

Sincerely yours,



JAMES E. TIERNEY
Attorney General

JET/ec

APPENDIX A

Text of 35 M.R.S.A. §§ 18 and 19.

§ 18. State energy budget

1. Budget. Beginning January 15th, 1984, and every 2 years thereafter, the commission shall transmit to the Governor and the Legislature a comprehensive state energy budget. The budget shall include, but not necessarily be limited to, the following:

A. Projection of the demand for electrical energy and natural gas in the State for the succeeding 5, 10 and 15-year periods;

B. A plan for the securing of sufficient supply to meet the projected demand, with maximum feasible utilization of renewable resources, including but not limited to solar, low head hydro, wind, peat, biomass and tidal resources; cogeneration technologies; and imported power;

C. A plan for the encouragement of conservation of energy by residential, commercial, governmental and industrial users;

D. Identification of any expected increases to the State's capacity to generate or transmit electrical energy and natural gas, the costs of the additions and an evaluation of their impact on the state's environment, the health and safety of the population and the short and long-term cost of the ratepayers;

E. A report on the impact of the state energy budget on the state's elderly and low income populations;

F. Recommendation to the Governor and the Legislature for any administrative or legislative actions which in the view of the commission are necessary to support the state energy budget or otherwise carry out the intent of this section; and

G. An explanation of the major assumptions and methods used in constructing the state energy budget.

2. Process. The state energy budget shall be determined as follows:

A. On or before January 15th of each year every electric company, gas company and natural gas pipeline company shall transmit to the commission its forecast of energy demand and proposed resources to meet that demand for its service area for the ensuing 5, 10 and 15-year periods. The specific content required for the forecasts shall be designated by rule making.

B. Within a reasonable time after receiving the forecasts, the commission shall prepare a forecast of energy demand and proposed resources to meet that demand for the State for the ensuing 5, 10 and 15-year periods. The specific content required for the forecast shall be designated by rule making.

C. Within a reasonable time after preparation of its forecast, the commission shall hold hearings to assess the reasonableness of company and other forecasts. After the hearings the commission shall make a preliminary decision and issue a draft budget.

3. Adoption. Prior to the adoption of the state energy budget by the commission, the draft of the budget prepared pursuant to subsection 2 shall be submitted to the Legislature solely for approval or disapproval. The plan shall be disapproved if 2/3 or more of each House of the Legislature votes a resolution of disapproval. In the absence of a 2/3 vote of disapproval within 60 calendar days from submission, the budget shall be deemed adopted.

§ 19. Energy Development Fund

1. Establishment. There is established an Energy Development Fund, to be administered by the commission. The fund will consist of moneys raised from the following sources:

A. General obligation bonds;

B. Revenue bonds issued by the commission and by others;

C. Grants, loans and gifts; or

D. Appropriations.

2. Purposes. The fund shall be used for financing projects within the guidelines set forth in the state energy budget.