

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

March 18, 1982

Honorable Norman O. Racine
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Racine:

You have requested an opinion from this Office interpreting the provisions of P. & S.L. 1973, c. 143, "An Act Appropriating Funds for Expansion and Improvement of the Biddeford Municipal Airport." The specific question you have posed is whether the remaining \$43,000 of that appropriation may now be expended for capital improvements and acquisition of equipment for the Biddeford Airport in the absence of federal matching funds. While the question is not free from doubt, we think that these funds should not be expended without matching funds. Alternatively, Chapter 143 could be amended to clarify the question.

One of the problems presented by your request is the lack of interpretive tools to employ in construing Chapter 143. Since the statute is not without ambiguity, it would be useful to be able to look to its legislative history and to similar enactments for guidance. See generally In re Richards, 272 F.Supp. 480 (D. Me. 1967). Since such sources do not exist for this measure, however, we must interpret it strictly on the basis of its specific language.

Using this method, we perceive two possible problems in interpreting Chapter 143 to permit the remaining money to be

expended currently and without federal matching ^{1/} funds. ^{2/} First, Chapter 143 appears to contemplate that the monies appropriated thereunder be expended with some immediacy. The measure contains an emergency preamble which states, inter alia, that "Biddeford Municipal Airport requires immediate expansion." The body of the Act states that the purpose of the appropriation is to make "immediate capital improvements" to the airport.^{3/} While again the conclusion is not clear-cut, it seems anomalous to view an expenditure of monies for a project to be commenced almost 9 years after the enactment of the measure as "immediate."

Even if the matter of immediacy were resolved in favor of current expenditure, there remains the problem of federal funding. The language of the Act is unequivocal: "This appropriation shall be contingent upon local and federal funds being available for this project." Putting aside the problem of whether the Act was intended to fund a single project, it is not unreasonable to suggest that the Legislature intended that the entire appropriation or at least a substantial portion of it be supplemented by federal matching funds. The contrary argument, that federal funds were used to match the small portion of the appropriation already expended and therefore that no more federal funds are required to satisfy the law's requirement, seems to undercut what we perceive as the intent of the Legislature. Thus, while this view is not free from doubt, we think that federal matching funds should be available before the additional monies appropriated by Chapter 143 can be expended.

The views expressed herein are not conclusive answers to the questions posed because Chapter 143 is not completely clear and because there are no other sources of interpretation than the language of the Act. Thus, we cannot say they would definitely

^{1/} By "matching" funds, we do not suggest that federal monies must be equal to state. It is our understanding that there is a standard formula for federal/state/local shares in airport development projects.

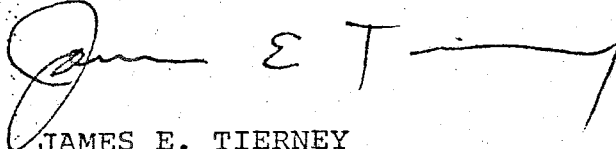
^{2/} Since it is our understanding that there is at least the possibility that local matching funds will be available, we do not address the question of whether they are necessary to the expenditure of the remaining appropriated funds.

^{3/} The non-lapse provision of Chapter 143 does not argue against this view, since it constitutes legislative recognition of the fact that capital improvements may be begun expeditiously but may also take some time to complete.

control in a court test. In light of these uncertainties, it would seem that the best course would be to seek legislative clarification.

If you have any further questions, please feel free to contact this Office.

Very truly yours,

A handwritten signature in black ink, appearing to read 'James E. Tierney', written in a cursive style.

JAMES E. TIERNEY
Attorney General

JET/ec

cc: Richard DePietro

Hon. Dennis L. Dutremble