

MAINE STATE LEGISLATURE

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May 16, 1991

Honorable Paul F. Jacques
House of Representatives
State House Station 2
Augusta, Maine 04333

Dear Representative Jacques:

I am writing in response to your inquiry of May 1, 1991 inquiring into the constitutionality of Section 0-1 of Chapter 9 of the Laws of Maine of 1991, "An Act Making Additional Appropriations From the General Fund and Allocations From Other Funds for the Expenditures of State Government for the Fiscal Year ending June 30, 1991," directing the transfer of funds in the Maine State Park and Recreation Area Fund for other purposes for a 15-month period. For the reasons which follow, it is the opinion of this Department that this provision violates Article IX, Section 14 of the Maine Constitution.

Article IX, Section 14 of the Maine Constitution provides that the Legislature shall not create any debt or liability on behalf of the State in excess of \$2,000,000, unless such debt is approved by two-thirds of both of its houses and ratified by the voters at a general election. In authorizing such a bond issue, the Legislature is required by the section to specify the "times" of issuance and the "amounts" and "purposes" for which the proceeds shall be used. It is implicit in this requirement that the proceeds actually be used for the stated purposes. Otherwise, the requirement of voter approval would be substantially compromised. Thus, this Department has consistently been of the view that the Legislature may not, by ordinary legislation, redirect the proceeds of bond issues to purposes outside of those specified in the authorizing legislation. Op. Me. Att'y Gen. (Dec. 8, 1977); Op. Me. Att'y Gen. (July 18, 1977); Op. Me. Att'y Gen. (Apr. 7, 1976).

The bond issue to which Section 0-1 of the 1991 Supplemental Appropriations Act is directed was authorized by the Legislature and the voters in 1967. P.&S.L. 1967, ch. 167. That Act authorized the Treasurer of the State to issue bonds in an amount not exceeding 4 million dollars and to place the proceeds in the Maine State Park and Recreation Area Fund, for the purpose of the acquisition of lands and waters for outdoor recreation, preservation of sites of historic or scientific interest, highway scenic or picnic areas, wildlife preservation and ecological conservation. P.&S.L. 1967, ch. 167, § 3. Evidently, as of the effective date of the 1991 Supplemental Appropriation Act, some of the proceeds of the authorized bonds remained in the Fund, under the control of the State Treasurer. Section 0-1 amended the 1967 Bond Authorization Act by adding the following sentences:

On or before April 1, 1991, the Treasurer of State shall transfer the unexpended balance in the Maine State Park and Recreation Area Fund and the interest-earning account established for that fund to the debt service account in the Office of the Treasurer of State. By June 30, 1991, the Treasurer of State shall restore to the Maine State Park and Recreation Area Fund and the interest-bearing account established for that fund the amounts transferred to debt service under this section.


In effect, the Treasurer was directed to take the funds remaining in the Fund and transfer them for some other purpose for a period not to exceed 15 months, and then to replace them in the Fund.

In the view of this Department, this action violated Article IX, Section 14 of the Maine Constitution, since the voters approving the bond issue in 1967 are constitutionally entitled to have the proceeds of the issue spent for the purposes stated at the time. Thus, these proceeds may not be used for other purposes, however general or temporary.^{1/}

^{1/}Because of this conclusion, this Department expresses no view on the question of whether Section 0-1 also violates the rights of bondholders protected by the Contract Clauses of the United States and Maine Constitutions. U.S. Const. art I, § 10, cl. 1; Me. Const. art. I, § 11. See generally United States Trust Co. of New York v. New Jersey, 431 U.S. 1 (1977). We are advised that at least some of the bonds issued pursuant to the 1967 legislation will not be retired until 1993.

I hope the foregoing answers your question. Please feel free to reinquiry if further clarification is necessary.

Sincerely,


MICHAEL E. CARPENTER
Attorney General

MEC/bls

cc: Governor John R. McKernan
President Charles P. Pray
Speaker John L. Martin
Senator Michael D. Pearson
Representative Lorraine N. Chonko
Chairpersons, Joint Standing Committee on Appropriations
Samuel Shapiro
State Treasurer