

# MAINE STATE LEGISLATURE

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N I N E T Y - E I G H T H      L E G I S L A T U R E

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**Legislative Document**

**No. 1533**

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In Senate, April 26, 1957.  
Ordered printed in document form. Read and placed on file.  
CHESTER T. WINSLOW, Secretary

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OPINION  
OF THE JUSTICES OF THE SUPREME JUDICIAL COURT  
GIVEN UNDER THE PROVISIONS OF SECTION 3  
OF ARTICLE VI OF THE CONSTITUTION  
\* \* \* \* \*  
QUESTION PROPOUNDED BY THE SENATE IN AN ORDER  
DATED APRIL 17, 1957  
ANSWERED APRIL 26, 1957

In Senate, April 17, 1957.

WHEREAS, it appears to the Senate of the 98th Legislature that the following is an important question of law and the occasion a solemn one, and

WHEREAS, there is pending before the Senate of the 98th Legislature a bill (H. P. 983, L. D. 1407) entitled, "An Act Relating to Industrial Development in City of Bangor." and

WHEREAS, it is important that the Legislature be informed as to the constitutionality of the proposed bill, be it therefore

ORDERED, that in accordance with the provisions of the Constitution of the State, the Justices of the Supreme Judicial Court are hereby respectfully requested to give the Senate their opinion on the following question:

Would House Paper 983, Legislative Document 1407, "An Act Relating to Industrial Development in City of Bangor." if enacted by the Legislature, be constitutional?

ANSWER OF THE JUSTICES

To the Honorable Senate of the State of Maine:

In compliance with the provisions of Section 3 of Article VI of the Constitution of Maine, we the undersigned Justices of the Supreme Judicial Court, have the honor to submit the following answer to the question propounded on April 17, 1957.

QUESTION: Would House Paper 983, Legislative Document 1407, "An Act Relating to Industrial Development in City of Bangor." if enacted by the Legislature, be constitutional?

ANSWER: We answer in the negative.

The proposed Act is designed to provide for industrial expansion in Bangor by the acquisition by the city by purchase, lease or by the exercise of the right of eminent domain of "lots, sites, improvements and places within the City of Bangor to be used for industrial development."

The Act, it may be noted, does not set forth standards for action by the city either in the acquisition of property or in its use or disposition, for example, by sale or lease for industrial purposes. These are details, however, which we need not and do not consider. Deficiencies in these respects could be remedied, if the plan broadly speaking were constitutional.

We prefer to place our answer upon consideration of the basic purpose of the Act. This, we are compelled to find, is a private purpose and not a public purpose under our constitution. It follows that the city may neither raise money by taxation nor acquire property by eminent domain for such purpose. There is neither the "public use" of taxation, nor the "public use" of eminent domain. The likelihood that public funds expended in acquisition of property might be repaid in whole or in part, or even with a profit, in its disposal does not alter the situation in its constitutional aspects. The taxpayer in the operation of the plan would be, or might be, called upon to pay therefor; and thus the constitutional bar remains firm.

We are not unmindful that the public exigencies or need for use of public monies for assistance in industrial development under the plan here proposed is determined by the Legislature (or under the Act by the city) and not by the Courts. See **Moseley v. York Shore Water Co.**, 94 Me. 83 (water supply); **Hayford v. Bangor**, 102 Me. 340 (library); **Crommett v. City of Portland**, 150 Me. 217, 233 (slum clearance). The value of the plan or its economic or social benefits, however, present no issues for judicial consideration. We mention these factors that it may plainly appear that our opinion does not touch the need or desirability of the plan, but solely the constitutionality thereof.

The pertinent provisions of the Maine Constitution are:

"He shall not . . . be deprived of his life, liberty, property or privileges, but by judgment of his peers or the law of the land." Art. I, Section 6.

"Private property shall not be taken for public uses without just compensation; nor unless the public exigencies require it." Art. I, Section 21.

"The legislature . . . with the exceptions hereinafter stated, shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this state, not repugnant to this constitution, nor to that of the United States." Art. IV, Part Third, Section 1.

We are unable to escape the conclusion that action under the Act would be for the direct benefit of private industry. An existing shoe factory or paper

mill, let us say, within the proposed industrial area or park could not, for reasons clear to all, be authorized under our Constitution to acquire additional facilities by eminent domain. That such a course could well be of great value to the particular enterprise and so to the city or community would not affect the application of the law.

The test of public use is not the advantage or great benefit to the public. "A public use must be for the general public, or some portion of it, who may have occasion to use it, not a use by or for particular individuals. It is not necessary that all of the public shall have occasion to use. It is necessary that every one, if he has occasion, shall have the right to use." **Paine v. Savage**, 126 Me. 121, 126.

The Act in violation of these principles seeks to have the city do for private enterprise what private enterprise cannot be authorized to do for itself.

Our Court in 1954, in the **Crommett** case, supra, in upholding the constitutionality of slum clearance in Portland, said at page 236, in considering the redevelopment phase of the program:

"Taken alone, the redevelopment of a city is not, in our view, a 'public use' for which either taxation or taking by eminent domain may properly be utilized."

"However beneficial it might be in a broad sense, it would clearly be unconstitutional for the Legislature to provide for the taking of any area in a city for the purpose of redevelopment by sale or lease for private purposes. Such a proposal would amount to no more than the taking of A's property for sale or lease to B on the ground that B's use would be economically or socially more desirable."

The preamble of the Act before us reads in part:

"Emergency preamble. Whereas, industrial development is essential to the preservation and betterment of the economy of the city of Bangor and its inhabitants; and

"Whereas, present opportunities for such development are limited under present conditions, and proposed imminent industrial development awaits the availability of an industrial area; . . ."

The similarity of the purposes discussed in the extract from the Court's opinion and in the preamble to the Act is at once apparent.

Under the Act the city does not seek to regulate the use of land through zoning. The plan calls as we have seen for the acquisition of property against the will of the owner if need be, with its placement in industrial use by private enterprise.

In our opinion the Act attempts what is forbidden by our fundamental law, and is unconstitutional.

Among the cases illustrating the principles on which we base our conclusion are: **Unconstitutional - private use: Allen v. Inhabitants of Jay**, 60 Me. 124 (loan by town to manufacturing concern); **Brewer Brick Co. v. Brewer**, 62 Me.

62 (exemption of manufacturing plant from taxation); **Opinion of Justices**, 118 Me. 503, 508, 513, 515 (water storage reservoir to increase value and capacity of water powers) "The dominant purpose here (water storage reservoir) is for private benefit and not for the 'benefit of the people,' and therefore the power of taxation to promote it does not exist."; **Bowden v. York Shore Water Co.**, 114 Me. 150, where the real purpose of the taking was to serve a private use of protection of timberlands from fire, and not a public use of protection of a public water supply; **Paine v. Savage**, supra, (a private logging road); **Haley v. Davenport**, 132 Me. 148 (a drain across a neighbor's land); **Perkins v. Inhabitants of Guilford**, 59 Me. 315 (town cannot tax for gift to an individual). See also **Opinion of Justices**, 58 Me. 590.

**Constitutional - public use:** **Laughlin v. City of Portland**, 111 Me. 486 (Portland municipal fuel yard); **State of Maine v. Vahlsing, Inc.** 147 Me. 417 (potato tax).

Dated at Augusta, Maine, this 26th day of April, 1957.

Respectfully submitted:

ROBERT B. WILLIAMSON  
DONALD W. WEBBER  
ALBERT BELIVEAU  
WALTER M. TAPLEY, Jr.  
FRANCIS W. SULLIVAN

#### MEMORANDUM:

Mr. Justice Dubord was out of the State when the foregoing question was submitted. Despite his entire willingness to return for the purpose of answering it, it is the unanimous view of his Associates that such action on his part is entirely unnecessary. He has all the material before him, has considered the question and authorizes the statement that he concurs in the answer.

ROBERT B. WILLIAMSON