

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

Legislative Document

No. 1568

Ordered printed in document form. Read and passed. In Senate, April 24, 1957.
CHESTER T. WINSLOW, Secretary

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 24, 1957
ANSWERED MAY 6, 1957

In Senate, April 24, 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 entitled "An Act Relating to Cost of Relocating Facilities in Federal-Aid Interstate Highway Projects." (Senate Paper 385, Legislative Document 1081) as amended by Senate Amendment A, (Legislative Document 1510); 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 the bill, "An Act Relating to Cost of Relocating Facilities in Federal-Aid Interstate Highway Projects," (Senate Paper 385, Legislative Document 1081) as amended by Senate Amendment A (Legislative Document 1510), if enacted by the Legislature, be constitutional?

ANSWER OF THE JUSTICES

To the Honorable Senate of the State of Maine:

In our opinion the Act is constitutional. However, the expenditure of the revenues described in Art. IX, Sec. 19 of our State Constitution for the purposes of the Act would be unconstitutional.

Under the proposed Act, the State will pay the cost of relocation of public utility facilities arising from the construction of an interstate system of highways under the Federal-Aid Highway Act of 1956.

In considering the constitutionality of the Act we must keep in mind both the Federal Act and our State Constitution.

The Federal-Aid Highway Act of 1956 reads, in part:

“Sec. III. Relocation of Utility Facilities

(a) Availability of Federal Funds for Reimbursement to States.—Subject to the conditions contained in this section, whenever a State shall pay for the cost of relocation of utility facilities necessitated by the construction of a project on the Federal-aid primary or secondary systems or on the Interstate System, including extensions thereof within urban areas, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are expended on the project: **Provided**, That Federal funds shall not be apportioned to the States under this section when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State.

(b) Utility Defined.—For the purposes of this section, the term ‘utility’ shall include publicly, privately, and cooperatively owned utilities.

(c) Cost of Relocation Defined.—For the purposes of this section, the term ‘cost of relocation’ shall include the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.”

Article IX, Section 19 of the Maine Constitution reads:

“All revenues derived from fees, excises and license taxes relating to registration, operation and use of vehicles on public highways, and to fuels used for the propulsion of such vehicles shall be expended solely for cost of administration, statutory refunds and adjustments, payment of debts and liabilities incurred in construction and reconstruction of highways and bridges, the cost of construction, reconstruction, maintenance and repair of public highways and bridges under the direction and supervision of a state department having jurisdiction over such highways and bridges and expense for state enforcement of traffic laws and shall not be diverted for any purpose, **provided** that these limitations shall not apply to revenue from an excise tax on motor vehicles imposed in lieu of personal property tax.”

First: Apart from Art. IX, Sec. 19 of the Constitution, which we later discuss, we find no objection to the Act on constitutional grounds. At common law there is no obligation to pay for the removal or relocation of public utility facilities required by changes in highways. *Belfast Water Co. v. Belfast*, 92 Me. 52 (1898); *Rockland Water Co. v. Rockland*, 83 Me. 267 (1891); *Telephone v. Cyr*, 95 Me. 287 (1901). The State, however, may, in our view, pay for the cost of relocating such facilities, if it chooses to do so. The purpose of such expenditures is public in nature, and the extent and conditions under which the State may meet such costs are for the Legislature to determine.

Second: In our opinion the relocation of a utility facility is not to be construed as construction or reconstruction of a highway within the meaning of Art. IX, Sec. 19 of the Constitution.

We do not commonly consider that a power company in erecting a pole line or a water district in laying a pipe in a highway is constructing a highway. To an even lesser degree would we consider the construction of a pole line or a water pipe across country to be the construction or reconstruction of a highway, although the reason for the relocation was occasioned solely by changes in the highway.

The language of the Constitution should not, in our view, be extended beyond its plain and ordinary meaning.

The expenditure of revenues from sources enumerated in Art. IX, Sec. 19, supra, for these purposes would, therefore, violate the Constitution. It will be noted, however, that there is no constitutional prohibition against the expenditure for such purposes of funds derived from other sources.

Dated at Augusta, Maine, this 6th day of May, 1957.

Respectfully submitted:

ROBERT B. WILLIAMSON
ALBERT BELIVEAU
WALTER M. TAPLEY, Jr.
FRANCIS W. SULLIVAN
F. HAROLD DUBORD

I concur with the foregoing opinion except as it places an interpretation upon Art. IX, Sec. 19 of the Constitution of Maine which in my view is too narrow. I am satisfied that the limitation placed upon the expenditure of highway funds was designed and intended to prevent raids on those funds for purposes entirely unrelated to the highway program. In my view expenditures which may reasonably be considered as incidental to the construction or reconstruction of highways may properly be met out of highway funds whenever the Legislature elects. Presumably utility facilities present an obstacle to the construction or reconstruction of a highway and so must be removed to permit the work to go forward. Obviously, if the facilities are necessary and serviceable, they must be replaced with facilities which are adequate to perform a like service. The proposed legislative enactment provides that any increased value of the facility will be provided by the utility and any salvage value of the old facility will be credited to diminish the cost. In short, the utility will be made whole and no more. If the cost of relocation, thus limited, be used as the measure of the damage to the utility, it seems to me that there is involved no expenditure of funds in excess of that reasonably incidental to construction and reconstruction. If the state were merely to pay to the utility the fair replacement value of the facilities which might be encountered, demolished and removed as the construction proceeded, the results would be the same. Art. IX, Sec. 19 does not in express terms

permit the expenditure of highway funds for the purchase or taking of land for the construction or reconstruction of highways, yet I suppose that no one would seriously question the right to make such expenditures out of highway funds as reasonably incidental to the construction of the road. If it were found less costly to move a building and establish it in a new location than to purchase the building outright and demolish it, I would not think that the expenditure of highway funds for this purpose would violate the constitutional intent. In the illustrations used, I see only a difference in degree but not in fundamental principle. I would hold the proposed enactment constitutional without regard to the limitations imposed by Art. IX, Sec. 19.

DONALD W. WEBBER