

# MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

OF THE

SIXTY-THIRD LEGISLATURE

OF THE

STATE OF MAINE.

1887.

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Published by the Secretary of State, agreeably to Resolves of June 28, 1820,  
February 18, 1840, and March 16, 1842.

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AUGUSTA:  
SPRAGUE & SON, PRINTERS TO THE STATE.  
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AUGUSTA:  
BURLEIGH & FLYNT, PRINTERS TO THE STATE.  
1889.

Question Submitted to the Supreme Judicial Court,  
by the Governor.

STATE OF MAINE.

EXECUTIVE DEPARTMENT, }  
AUGUSTA, MAINE, March 30, 1889. }

*To the Honorable Justices of the Supreme Judicial Court:*

Under, and by virtue of, the authority conferred upon the Governor, by the Constitution of Maine, Article VI, Section 3, and being advised, and believing, that the questions of law are important, and that it is upon a solemn occasion, I, Edwin C. Burleigh, the Governor, respectfully submit the following statement of facts, and question, and ask the opinion of the Justices of the Supreme Judicial Court thereon.

STATEMENT.

\$1,748,000.00 of the bonded indebtedness of the State of Maine, issued by virtue of a resolve, approved March 19th, 1864, (Resolves, 1864, Chap. 318) mature on the 1st day of June, A. D. 1889.

\$2,187,400.00 of the bonded indebtedness of the State of Maine, issued by virtue of an Act of the Legislature, approved March 7th, A. D. 1868, (P. L. 1868, Chap. 225,) as amended by Act approved March 3rd, A. D. 1869 (P. L. A. D. 1869, Chap. 40) mature on the first day of October A. D. 1889.

In addition to this bonded indebtedness there is other outstanding bonded indebtedness of the State of Maine, amounting to \$82,000.00.

The Legislature of 1889, enacted An Act, entitled, "An Act to Provide for the Refunding of the Public Debt, and to repeal an Act entitled, 'An Act to provide for the refunding of the Public Debt', approved February 26th, A. D.

1889", approved March 13th, 1889, (P. L. 1889, Chap. 308,) a copy of which is herewith submitted.

QUESTION.

Is this act, (P. L. 1889, Chap. 308,) constitutional, and would bonds issued by virtue of its provisions, be valid?

Very respectfully,

EDWIN C. BURLEIGH,

GOVERNOR.

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Opinion of the Supreme Judicial Court.

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AUGUSTA, MAINE, April 1st, 1889.

*Honorable Edwin C. Burleigh*, Governor.

SIR:—Your communication, of date March 30, 1889, asking the opinion of the Justices of the Supreme Judicial Court, whether, in their opinion, upon the statement in your communication, the Act of the Legislature of Maine, approved March 13th, A. D. 1889, being Chapter 308, of the Public Laws of 1889, is constitutional, and whether bonds issued under that act would be valid, was duly received and has been fully considered.

In answer to your inquiry we respectfully reply, that it is the opinion of all the Justices that the Act referred to is constitutional, and that bonds issued in pursuance of such act would be valid.

Article 9, Section 14, of the Constitution, declares that the Legislature shall not create any debt exceeding a limited amount named, "except to suppress insurrection, repel invasion, or for purposes of war." The issue of bonds which, by the Act of 1889, is to be dated as of June 1st, 1889, will vastly exceed the constitutional limit, should it be regarded as a new debt. In our opinion, it cannot, in a constitutional sense, be so regarded.

It will rather be the old debt in new form. The issue of bonds soon to mature, was originally provided "for purposes of war", and represents a war debt of the State. But the bonds to be issued will just as much represent the war debt as do the bonds to be retired. It will be, as the Act denominates it, a renewal and extension of the bonded indebtedness of the State.

A new credit or borrowing is substituted for the old, upon favorable terms to the State.

If the new bonds be exchanged for the old, bond for bond, it would literally be a renewal and extension of the debt, and if the new bonds are sold to obtain means with which to liquidate the old, it will in all essential respects amount to the same thing.

The same result will be reached as far as the State is concerned. The old bonds were evidence of the war debt. The new bonds will become such evidence by substitution. The holders of the old bonds would in equity, be considered as receiving payment of their debt from the purchasers of the new bonds, when the money received from the new is applied to take up the old bonds, and the Act provides that the receipts of sale shall be so applied, and judicial remedy may be had, if need be, to prevent misapplication. Whether the debt of the State be represented by the one set of bonds, or the other, it is one and the same debt, as far as the constitutional provision affects the question. The new issue postpones payment of the debt, but does not extinguish it. Final payment must come, as the Act intends, from gradual taxation of the people and property of the State.

The issue of bonds to bear date of October first, 1889, is to be appropriated for the payment or renewal of another indebtedness of the State, which was originally authorized by Section 15, of Article 9, of the Constitution. That section authorized the State to issue bonds payable within twenty-one years, with six per cent interest, the bonds or their proceeds to be devoted towards the reimbursement of the towns and cities of the State for the expenditure of moneys for the purposes of war during the Rebellion.

Now that these bonds are nearly due, we can perceive no constitutional, or other objection, to a renewal or payment of them by new issues. The constitutional clause provided that the original issues should be, at six per cent, on no longer

time than twenty-one years. But it does not in terms, or by implication, limit the means by which the indebtedness should be finally paid. No sinking fund is required, nor mode of taxation prescribed, by the constitutional clause, to insure an extinguishment of the debt before or at the end of the twenty-one years. The debt is a valid constitutional obligation of the State, and the Legislature is not prevented from resorting to any practical methods for keeping the credit of the State unsullied.

It follows, that the Legislature has the power to prescribe such means for the payment or renewal of this branch of the State indebtedness, as it deems proper, without infringing upon other constitutional provisions.

JOHN A. PETERS,  
 CHAS. W. WALTON,  
 CHARLES DANFORTH,  
 WM. WIRT VIRGIN,  
 ARTEMAS LIBBEY,  
 LUCILIUS A. EMERY,  
 ENOCH FOSTER,  
 THOS. H. HASKELL.

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AMENDMENT TO CONSTITUTION OF MAINE,  
 ADOPTED IN PURSUANCE OF THE SECOND  
 SECTION OF THE TENTH ARTICLE OF THE  
 AMENDED CONSTITUTION.

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ARTICLE XXVII.

ELIGIBILITY OF THE TREASURER OF STATE.

Treasurer of  
 state, eligibility  
 of.

SECT. 1. The Treasurer shall be chosen biennially, at the first session of the legislature, by joint ballot of the Senators and Representatives in convention, but shall not be eligible more than six years successively.

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NOTE.—The twenty-seventh amendment was proposed to the people by a resolve of the sixty-third legislature, approved March 10, 1887; adopted, September 10; proclaimed by Governor Marble, December 14, 1888, and took effect on the first Wednesday of January, 1889.