

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE
LEGISLATIVE RESEARCH COMMITTEE

REPORT ON
MAINE TURNPIKE AUTHORITY
to the
ONE HUNDRED AND SIXTH LEGISLATURE

JANUARY, 1973
Legislative Research Committee
Publication 106-10



MAINE TURNPIKE AUTHORITY

WHEREAS, the private and special laws of 1941, chapter 69 created the Maine Turnpike Authority for purposes of providing an expressway from a point at or near Kittery to a point at or near Fort Kent, Aroostook County; and

WHEREAS, the Federal Government and the State of Maine have set up a system of interstate highways; and

WHEREAS, pursuant to said Act an expressway was built between Kittery and Augusta; and

WHEREAS, a portion of the Maine Turnpike has been designated for inclusion in said interstate highway system; and

WHEREAS, payment of tolls on said highway places a burden on users of that section of designated highway; and

WHEREAS, existing tolls create congestion on Route #1 and other alternate routes; now, therefore, be it

ORDERED, the House concurring, that the Legislative Research Committee be directed to study, review and analyze the operations of the Maine Turnpike Authority, its financial structure and the feasibility of reverting the Maine Turnpike to the State of Maine; and be it further

ORDERED, that the committee report its findings and recommendations at the next special or regular session of the Legislature; and be it further

ORDERED, that all departments and agencies of State Government shall cooperate with the committee and are directed to provide such technical and other assistance as the committee deems necessary or desirable to carry out the purposes of this Order, including but not limited to personnel and staff as a part of their regular employment; and be it further

ORDERED, that there is allocated to the committee from the Legislative Appropriation the sum of \$3,000 to carry out the purposes of this Order; and be it further

ORDERED, that the committee shall have the authority to employ professional and clerical assistance as they deem necessary within the limits of funds provided.

SP 291	In Senate Chamber	House of Representatives
Marcotte	Read and Passed	Read and Passed
York	June 21, 1971	June 22, 1971
	Sent down for concurrence	In concurrence

SUBCOMMITTEE ON MAINE TURNPIKE AUTHORITY

CHAIRMAN - Richard N. Berry

VICE CHAIRMAN - Gerard P. Conley

Edwin H. Greeley

Guy A. Marcotte

Richard W. Stillings

MAINE TURNPIKE AUTHORITY

The Legislative Research Committee has studied, reviewed and analyzed the operations of the Maine Turnpike Authority, its financial structure and the feasibility of reverting the Maine Turnpike to the State of Maine as directed by Joint Order S.P. 291 of the 105th Legislature.

In summary, the Committee finds after dealing with this matter in depth, that legislative action to revert holdings of the Maine Turnpike Authority to the State of Maine is not feasible at the present time. Appropriate portions of a legal memorandum considered by the Committee is as follows:

MEMORANDUM

This memorandum is concerned with two questions: (1) The constitutionality of legislation terminating the existence of the Maine Turnpike Authority and causing the Turnpike to revert to the State of Maine; (2) Whether the Turnpike can by legislative enactment be made a free road, and if so, under what circumstances and conditions.

(1) Subject to qualifications which will be examined later, it appears unquestionable that the Legislature can designate a successor body to assume the functions of the Maine Turnpike Authority. This exact question has been raised in litigation in several jurisdictions with Enabling Legislation and Indentures

similar to those of the Maine Turnpike Authority, and the Courts have consistently resolved any controversy in favor of allowing the state to terminate the respective authority.

In Opinion of the Justices, 246 A. 2d 90 (Del. 1968), the Justices of the Supreme Court of Delaware considered the question of whether an act which would reorganize various school districts into one consolidated district was constitutional. The specific concern of the Justices was whether the contract between the bondholders of the former school districts and those school districts would be impaired by having the indebtedness secured by those bonds assumed by the new school district. The Court answered that as long as the property securing the bonds remained the same, and as long as the bondholder's right to enforce the collection of principal and interest was unimpaired, substitution of a new school district did not impair any vested contractual rights and was constitutional. In a slightly different, but more analogous situation, the Supreme Court of Illinois in Continental Illinois National Bank & Trust Co. of Chicago v. The Illinois State Toll Highway Commission, 42 Ill. 2d 385, 251 N.E. 2d 253 (1969) considered basically the same question. In that case, the State of Illinois had enacted legislation creating a State Toll Highway Authority which transferred the functions of the State Toll Highway Commission, with all its property, rights and obligations, to the new Authority. The Court held that the transfer of functions and the transfer of the Commission's assets to the newly created Authority would not impair the bondholder's

contractual rights, and pointed to the resolution authorizing the issuance of the bonds, wherein provision was clearly made for the appointment of a successor to the Commission. In this regard, it is extremely significant to note that our Turnpike Enabling Act provides, in Section 3(a):

"(a) The word 'authority' shall mean the Maine turnpike authority hereinafter created, or if said authority shall be abolished, any board, commission or officer succeeding to the principal functions thereof, or upon whom the powers given by this act to said authority shall be given by law."

This language leaves little doubt but that the Legislature made provision for the possibility of replacing the Maine Turnpike Authority with a successor body. It should also be noted that a similar right is reserved in the trust indenture, where it is stated in Section 1301:

"In the event of the dissolution of the Authority all of the covenants, stipulations, obligations and agreements contained in this Indenture . . . shall bind or inure to the benefit of the successor or successors of the Authority from time to time and any officer, board, commission, Authority, agency or instrumentality to whom or to which any power or duty affecting such covenants . . . shall be transferred . . . and the word 'Authority' as used in this Indenture shall include such successor or successors."

Thus, both the Act creating the Authority, and the contract which it entered into with the bondholders, contemplate the possible abolition of the Authority, and such language is controlling.

(2) The foregoing discussion clearly settles any question of whether the Maine Turnpike Authority can be abolished and its functions transferred to a successor body. It is similarly clear

that such a successor body, or an act of the Legislature itself, could not turn the Turnpike or any part of it into a free road unless all of the principal and interest on the Turnpike bonds had been paid.

The Bond Indenture is a contract between the Authority and its bondholders. (See, e.g. The First National Bank of Boston v. Maine Turnpike Authority, 153 Me. (31, 165, 1957), and as such, is subject to constitutional prohibitions against the impairment of contracts:

"No State shall . . . pass any . . . law impairing the obligations of contracts . . ." (U.S. Constitution Article I, Section 10).

"The Legislature shall pass no bill of attainder, ex post facto law, nor law impairing the obligation of contracts . . ." (Maine Constitution, Article I, Section 11).

The Indenture provides in Section 501 that the Authority covenants that it will continue in effect the schedule of tolls existing at the time of the Indenture, and that revisions of such toll schedule will only be allowed upon a recommendation by the Consulting Engineers.

Section 501 also provides that the authority covenants that the "revenues of the Turnpike will at all times be sufficient" to provide for payment of current expenses, deposits to the Reserve Maintenance Fund, and deposits to the Sinking Fund in an amount sufficient to pay not only interest on the outstanding bonds, but additional yearly reserves amounting to several million dollars.

In Section 502 the Authority covenants:

"that tolls will be classified in a reasonable way to cover all traffic, so that the tolls may be uniform and application to all traffic falling within any class regardless of the status or character of any person, firm or corporation participating in the traffic, that no reduced rate of toll will be allowed within any such class except through the use of commutation or other tickets or privilege based upon frequency or volume, and that no free vehicle passage will be permitted over the Turnpike except to members, officers and employees of the Authority and of the Highway Department and the State Police of the State of Maine while in the discharge of their official duties . . ."

These, then, are some of the promises made by the Turnpike Authority in its contract with the bondholders. There are affirmative covenants not only to produce sufficient revenue to pay off interest and other yearly sums, but also to allow no free vehicle passage. The law appears to be quite clear that any legislative interference with such contractual promises would constitute an interference with, and impairment of, the contract between the Authority and its bondholders. First National Bank of Boston & National Bank of Commerce of Portland v. Maine Turnpike Authority 153 Maine 131 (1957), was a declaratory judgment action brought by the Trustees under the bond indenture seeking a declaration that a 1955 amendment to the Enabling Act, which had placed on the Turnpike Authority the expenses (totaling about \$300,000) involved in relocating various utilities encountered in public ways crossed by the Augusta Extension, violated the contracts clause of the Federal Constitution. In holding the amendment unconstitutional, the Court said:

"The Legislature possessed the power and authority to alter, amend or repeal the Enabling Act at any time following the enactment thereof . . . but in the exercise of that prerogative, the Legislature had no right to impair the obligation of a contract amongst the Authority and others." (153 Maine at 165)

The Court went on to state:

"The Legislature in the Enabling Act had been at considerable pains to immunize the State of Maine from liability for the turnpike and to make it unmistakably clear that the State's credit was in no way pledged therefor. To compensate for those negations, the State afforded considerable security to bondholders to assure a favorable marketability for the bonds . . . The indenture, in 1953 was adapted to the Act. The Enabling Act and Indenture were the basis of the bondholders and trustees' contract with the Authority, a governmental agency."

The Court went on to hold that since the Authority had contracted to dispose of its funds in a certain manner, payment for the utilities could be "made only by diversion from moneys which pursuant to the enabling act and the indenture thereunder had been in 1953 pledged with the Plaintiff trustees for the turnpike bondholders."

Thus, it appears clear that if the Legislature acted unconstitutionally in diverting \$300,000 from Turnpike funds to pay the cost of utility relocation, it would be committing a far more egregious constitutional infraction in unilaterally turning the Turnpike or any portion thereof into a free highway.

Cases from other jurisdictions fully support the principle of the Maine Turnpike case. In the Continental Illinois National Bank case (supra) the Court concluded that as long as bonds of the old Commission remained outstanding, revenues from Commission toll roads would not be available to pay off any unrelated bonds issued

by the new Authority. In Opinion of the Justices, 334 Mass. 721, 136 N.E. 2d, 233 (1956) the Justices of the Massachusetts Supreme Judicial Court were asked to consider a proposed bill which would take over the various tunnels, bridges, airports, harbors and piers owned by the State, and place them all under the jurisdiction of the newly created Massachusetts Port Authority. The Justices agreed that the grants of power to the various bodies which were to be abolished, are "freely revocable and amendable," but at the same time, the Court was quick to point out that:

"The power of revocation and amendment is not, however, without limits . . . Statutory changes may go at least to such extent as will not defeat or substantially impair the object of the grant, or any rights which have vested under it." (136 N.E. 2d at 233)

In Clark v. City of Philadelphia, 328 Penn. 521, 196 A 384 (1938), the Court refused to allow the City of Philadelphia to consolidate all sinking funds pursuant to a newly enacted State law. The Court said that since the sums are inviolably reserved for payment of a certain debt, the bondholders would enjoy less protection if the funds were consolidated:

"The bondholder is entitled to the benefit of what the city, in the loan contracts, agreed to perform; to deprive him of this right is to impair the obligation of the contract."

With respect to the constitutional limitation on removing tolls from any portion of the Turnpike while bonds are still outstanding, it is important to note that such limitation creates an insurmountable obstacle to any possible attempts to obtain Federal "90-10" money. (See attached letter from Daniel Boxer to David Stevens, and reply thereto by F.C. Turner, Federal

Highway Administrator, in particular the last paragraph, stating in part ". . . we know of no Federal legislation which would permit reconstruction of a portion of the Maine Turnpike with Federal funds.") Thus, by appointing a successor body to the Maine Turnpike Authority, the State would be no closer than it presently is to obtaining Federal Highway funds as long as the Turnpike remains a toll road.