

In formulating your rules and regulations under section 9(f) of the Public Assistance Law, supra, consideration should be given by your department to standards imposed by the Department of Welfare for the protection of dependent and neglected children of the Commonwealth, and county institution districts would not be eligible, under section 9(f), if such districts did not meet minimum standards of child care as provide for under section 401 of the County Institution District Law, supra, and Bulletin 81, 1940, established by the Department of Welfare and approved by the State Welfare Commission.

We are of the opinion, therefore, that you may in your discretion adopt a rule or regulation restricting payments under Section 9(f) of the Public Assistance Law, the Act of June 24, 1937, P. L. 2051, as amended by the Act of April 28, 1949, P. L. 767, Act No. 189, 62 P. S. § 2509, to those county institution districts which meet minimum standards imposed under the law by the Department of Welfare for care of dependent and neglected children.

Very truly yours,

DEPARTMENT OF JUSTICE,

T. McKEEN CHIDSEY,  
Attorney General.

M. LOUISE RUTHERFORD,  
Deputy Attorney General.

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OPINION No. 601

*State Highway and Bridge Authority and the Department of Highways—Legal questions concerning the program:*

1. The Contract to Lease and the Lease itself, when properly signed, is a binding obligation to pay out of the current revenues of the Commonwealth, including the Motor License Fund.

2. Once the Contract to Lease is signed, executed and delivered, neither the Commonwealth nor the Department of Highways can compel the Authority to discontinue the project.

3. The proposed form of Approval by the Governor in the Contract to Lease is sufficient so that the Department of Highways can execute the Lease in accordance with said approval, upon completion of the project, without further approval of the Governor.

4. The aggregate rentals to become due under the Contract to Lease and the Lease itself will not constitute a prohibited indebtedness of the Commonwealth within the meaning of Article IX, Section 4 of the Constitution.

5. The bonds of the Authority are not in any way obligations or debts of the Commonwealth in excess of the limitations imposed upon Article IX, Section 4 of the Constitution of the Commonwealth of Pennsylvania.

6. The appropriation contained in Section 18 of the State Highway and Bridge Authority Act is unlimited in duration so that the rentals to become due under the leases of completed projects may be paid out of the Motor License Fund without further appropriation out of such fund by the General Assembly.

Harrisburg, Pa., November 22, 1949.

Honorable Ray F. Smock, Secretary, Department of Highways, Harrisburg, Pennsylvania.

Sir: This department is in receipt of your request for an opinion concerning certain legal problems which have arisen due to the program of The State Highway and Bridge Authority and the Department of Highways. We understand that the Authority will construct public highways and bridges for the Commonwealth as authorized by the State Highway and Bridge Authority Act, approved April 18, 1949, (P. L. 604). We have examined the Authority's Proposed Official Statement and the form of Contract to Lease, Approval of the Governor and Lease attached thereto as exhibit 2.

Your questions are very similar to the questions asked by the Secretary of Property and Supplies with respect to the problems of The General State Authority, answered in our Formal Opinion No. 595 dated July 11, 1949, a copy of which is attached hereto.

We shall answer your questions in the order asked, without extended citation of cases or statutes where the matter is fully covered in our previous opinion with respect to The General State Authority.

The first question is:

1. Is the Contract to Lease and the Lease itself, when properly signed, a binding obligation to pay out of the current revenue of the Commonwealth, including the Motor License Fund?

The State Highway and Bridge Authority Act, *supra*, in section 4(h) empowers the Authority:

to fix, alter, charge, and collect . . . rentals and other charges for the use of . . . projects . . . at reasonable rates to be determined by it, for the purpose of providing for the

payment of the expenses of the Authority, . . . payment of the principal of and interest on its obligations, and to fulfil the terms and provisions of any agreements made with the purchasers or holders of any such obligations.

By Section 11 of the said act, the Department of Highways is given the power and authority with the approval of the Governor:

to enter into contracts with the Authority, to lease as lessee from the Authority any or all of the projects undertaken by the Authority for a term, with respect to each project constructed, not exceeding thirty (30) years, at such rental or rentals as may be determined by the Authority, and upon the completion of the said projects, the department will have power and authority, with the approval of the Governor, to lease as lessee any or all of the projects completed by the Authority for a term, with respect to each project leased, not exceeding thirty (30) years, at such rental or rentals as may be determined by the Authority.

In our opinion, and for the reason stated in our Opinion No. 595, each contract to lease and lease, when properly approved, executed and delivered, if for a term permitted by law, will be a legal, valid and binding instrument in accordance with its terms, obligating the Commonwealth to pay the rentals provided therein out of its current revenues, including the Motor License Fund.

Your second question is:

2. Once the Contract to Lease is signed, executed and delivered, can the Department of Highways or the Commonwealth compel the Authority not to complete the project?

Again, for the reason stated in our Opinion No. 595, this question must be answered in the negative.

Your third question is:

3. Is the proposed Form of Approval by the Governor in the Contract to Lease sufficient so that the Department of Highways can execute the Lease in accordance with said approval, upon completion of the project, without further approval of the Governor?

This question must be answered in the affirmative for the reasons more fully set forth in our previous Opinion.

Your fourth question is:

4. Will the aggregate rentals to become due under the Contract to Lease and the Lease itself constitute a prohibited

indebtedness of the Commonwealth within the meaning of Article IX, Section 4 of the Constitution?

This question must be answered in the negative. The aggregate of the rentals will not constitute a prohibited indebtedness of the Commonwealth within the meaning of Article IX, Section 4 of the Constitution.

Your fifth question is:

5. Are the bonds of the Authority in any way obligations or debts of the Commonwealth in excess of the limitations imposed upon Article IX, Section 4 of the Constitution of the Commonwealth of Pennsylvania?

The act before us follows very closely the provisions of the former General State Authority Act and the provisions of the General State Authority Act of one thousand nine hundred forty-nine. The differences in our opinion have no significance so far as the questions raised are concerned, and we feel that the authorities cited in our previous Opinion No. 595 are equally controlling.

Your sixth question is:

6. Is the appropriation contained in Section 18 of the State Highway and Bridge Authority Act unlimited in duration so that the rentals to become due under the leases of completed projects may be paid out of the Motor License Fund without further appropriations from the General Assembly?

In our opinion, the appropriation is unlimited in duration and no further appropriation is necessary from the General Assembly to enable the Department of Highways to requisition upon the State Treasurer, or to enable the State Treasurer to pay and the State Auditor General to approve the payment of rentals becoming due under valid leases from the State Highway and Bridge Authority to the Commonwealth of Pennsylvania, acting through the Department of Highways. While the leases are payable out of the revenues of the Commonwealth, including the Motor License Fund, your attention is directed to the fact that the only appropriation made for the purpose is the appropriation contained in section 18 of the State Highway and Bridge Authority Act which is limited to the moneys in the Motor License Fund.

It is specifically provided in the State Highway and Bridge Authority Act that the rentals fixed by the Authority for its projects "at reasonable rates to be determined by it," may be so fixed "for the purpose of providing for . . . the payment of the principal of and interest on its obligations and to fulfil the terms

and provisions of any agreements made with the purchasers or holders of any such obligations." Inasmuch as the projects of the Authority are limited to the constructing and reconstructing, improving, equipping, furnishing, maintaining and operating State highway bridges, viaducts, toll bridges, tunnels, traffic circles on State highways, maintenance sheds, offices and garages and roadside rests, we are of the opinion that the bonds of the Authority are obligations incurred in the construction or reconstruction of State highways and bridges, and that the rentals fixed for their retirement may validly be paid from the Motor License Fund, under the existing statutes and Constitution of the Commonwealth of Pennsylvania.

Your attention is also directed to the fact that under the provisions of Article IX, Section 18 of the Constitution, the receipts from the various taxes now constituting the principal sources of revenue of the Motor License Fund cannot be used to pay the principal of or interest on any general obligation bonds of the Commonwealth of Pennsylvania unless the said bonds were issued to obtain funds to be used for the highway purposes specified in said Section 18 of Article IX of the Constitution.

By way of summation, we are therefore of the opinion that:

1. The Contract to Lease and the lease itself, when properly signed, is a binding obligation to pay out of the current revenues of the Commonwealth, including the Motor License Fund.
2. Once the Contract to Lease is signed, executed and delivered, neither the Commonwealth nor the Department of Highways can compel the Authority to discontinue the project.
3. The proposed form of Approval by the Governor in the Contract to Lease is sufficient so that the Department of Highways can execute the lease in accordance with said approval, upon completion of the project, without further approval of the Governor.
4. The aggregate rentals to become due under the Contract to Lease and the lease itself will not constitute a prohibited indebtedness of the Commonwealth within the meaning of Article IX, Section 4 of the Constitution.
5. The bonds of the Authority are not in any way obligations or debts of the Commonwealth in excess of the limitations imposed upon Article IX, Section 4 of the Constitution of the Commonwealth of Pennsylvania.

6. The appropriation contained in Section 18 of the State Highway and Bridge Authority Act is unlimited in duration so that the rentals to become due under the leases of completed projects may be paid out of the Motor License Fund without further appropriation out of such fund by the General Assembly.

Very truly yours,

DEPARTMENT OF JUSTICE,

T. McKEEN CHIDSEY,  
Attorney General.

PHIL H. LEWIS,  
Deputy Attorney General.

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OPINION No. 602

*Taxation—Liquid fuel tax—Partial reimbursement—Use on farm—Act of May 26, 1949, amending section 17 of The Liquid Fuels Tax Act of May 21, 1931—Tractor—Sprayer—Saw mill—Lighting system—Combines and harvesters—Reimbursements to one other than owner of farm—Proof of payment—Delivery slips.*

1. A nonlicensed motor vehicle used exclusively on a farm in the production of farm products is "powered farm machinery" within the meaning of the Act of May 26, 1949, P. L. 1880, amending section 17 of The Liquid Fuels Tax Act of May 21, 1931, P. L. 149, by providing for the partial reimbursement of taxes paid on liquid fuels used by nonlicensed powered farm machinery.

2. If the Secretary of Revenue determines that a motor vehicle which cannot be used as a motor vehicle is a tractor, the tax paid on gasoline consumed by it in furnishing power to a sprayer mounted thereon is reimbursable under the Act of May 26, 1949, P. L. 1880.

3. Taxes paid on gasoline consumed in furnishing power for a saw mill for work done in connection with the operation of a farm, or in the operation of licensed or nonlicensed combines or harvesters while used in the actual production of farm products, are reimbursable under the Act of May 26, 1949, P. L. 1880.

4. Taxes paid on gasoline consumed in a lighting system used on a farm are reimbursable under the Act of May 26, 1949, P. L. 1880, only to the extent that the electrical current generated was used in operating powered farm machinery.

5. In order to be entitled to reimbursement of liquid fuels taxes under the Act of May 26, 1949, P. L. 1880, the applicant need not be the owner or operator of the farm on which the liquid fuels were used.

6. The Board of Finance and Revenue may accept current delivery slips of liquid fuels in support of claims for reimbursement under the Act of May 26,