

The Commonwealth of Massachusetts

EXECUTIVE DEPARTMENT,
STATE HOUSE, BOSTON, August 29, 1966.

To the Honorable Senate and House of Representatives:

The Southeastern Massachusetts Technological Institute Building Authority was established by Chapter 703 of the Acts of 1964. Its general purpose is to contribute to the educational purposes of the Institute by providing dormitories, dining commons and other buildings and structures for the use of the Institute, its students, staff and their dependents. The S.M.T.I. Building Authority is substantially identical to the Building Authorities created for the University of Massachusetts, Lowell Technological Institute and the several state colleges.

In compliance with its statutory mandate, the S.M.T.I. Building Authority cooperated with the Institute Trustees in studies which established the need for sufficient housing to accommodate 600 students by September, 1968, to be expanded to facilities capable of housing 2,200 students by 1975. The studies also indicated a need for student center facilities for both resident and non-resident students.

During the third week of August, the Building Authority was informed by its bond counsel that certain serious constitutional questions existed in connection with Chapter 703 of the Acts of 1964, the Authority's enabling act. A copy of bond counsel's letter of August 19, 1966, is attached and designated Appendix A. If these problems raised by Chapter 703 are not obviated, bond sales to finance construction of the self-liquidating dormitory and student-union buildings on the S.M.T.I. campus will be blocked. Legislative action is required in order to remedy the Chapter 703 defects. The emergency nature of accomplishing this during the present

legislative session is underscored by the fact that if the Authority is not able to undertake financing within the next few months, it will not be able to meet its September, 1968, deadline for the 600-unit dormitory.

The S.M.T.I. Building Authority's bond counsel has prepared legislation which would amend the defects in Chapter 703 and thus pave the way for the Authority to issue its bonds. This legislation has been thoroughly studied and approved by me and my legal staff, and I submit it for your early approval as Appendix B of this message.

Section 1 of Appendix B would correct a typographical error appearing at one place in Chapter 703 by changing the words "body politic incorporate" to "body politic and corporate".

Section 2 of Appendix B would eliminate the controls presently maintained by the S.M.T.I. Trustees over the employment and contractual powers of the Building Authority. This is necessary in order to foreclose the possibility of an assertion being made and upheld in the future that the Building Authority is not truly an independent entity separate from the Commonwealth. As Chapter 703 presently stands, any finding that a bond issue by the S.M.T.I. Building Authority is in truth a borrowing by the Commonwealth would severely and adversely affect the status of any such bond issue since certain requirements of Amendment 62 of the Massachusetts Constitution relating to borrowing by the State have not been met.

Section 3 of Appendix B is merely another technical amendment which would clarify the power of the Authority to invest funds not immediately needed by it in obligations of the United States.

Sections 4 and 5 of Appendix B would modify the maximum borrowing power of the S.M.T.I. Building Authority and the guaranty commitment of the Commonwealth by setting a limit on both of thirty million dollars. This would provide amply for the needs of the physical plant at the Institute as projected through 1975. I specifically recommend the terms of borrowing set forth in Chapter 703 as proposed to be amended.

Both the members of the S.M.T.I. Building Authority as well as the S.M.T.I. Trustees specifically endorse each and every measure included in the appended bill. Both of these bodies indicated their affirmative action in this regard by their letter of August 26, 1966, a copy of which is attached and designated Appendix C.

I commend the attached legislation to Your Honorable Bodies for approval pursuant to the requisite two-thirds vote by call of the yeas and nays in each House. Early passage of this measure will make possible the continued expansion of the Commonwealth's educational facilities necessary to provide every citizen of Massachusetts with the opportunities to which they are entitled.

Respectfully submitted,

JOHN A. VOLPE,
Governor of the Commonwealth.

APPENDIX A.

ELY, BARTLETT, BROWN & PROCTOR
225 FRANKLIN STREET

BOSTON, MASSACHUSETTS, August 19, 1966

PATRICK H. HARRINGTON, Esq.

56 North Main Street

Fall River, Massachusetts

RE: SOUTHEASTERN MASSACHUSETTS TECHNOLOGICAL
INSTITUTE BUILDING AUTHORITY

DEAR MR. HARRINGTON:

At your request we have examined Chapter 703 of the Acts of 1964, creating Southeastern Massachusetts Technological Institute Building Authority, and the procedures by which this Chapter was enacted to determine whether or not we could as bond counsel express an opinion respecting financing proposed to be undertaken by the Authority.

This statute is substantially the same as those creating other like authorities except for specific provisions in Sections 4(k) and 4(m) conferring upon the trustees of the Institute powers respecting the employment by the Authority of personnel and the making by the Authority of contracts.

According to the Journals of the General Court, Chapter 703 was introduced as a bill filed by a senator and was not enacted by a recorded vote of the members of each branch.

Because of constitutional doubts arising from certain language in the opinion of the Supreme Judicial Court in *Ayer v. Commissioner*, 340 Mass. 586, we have considered that legislation authorizing these institutional building authorities to borrow money and authorizing the guaranty by the Commonwealth of the payment thereof should be introduced and enacted in a manner substantially meeting the requirements of the Massachusetts Constitution relating to the borrowing of money. This is not to say that it is our opinion that a borrowing by such an authority constitutes a borrowing by the Commonwealth itself; it is to say that, in our opinion, every constitutional question which can be eliminated ought to be eliminated in advance of any borrowing.

Accordingly, we recommend that Chapter 703 be amended by striking out the language in Sections 4(k) and 4(m) giving the trustees of the Institute controls over Authority action and that Chapter 703 be further amended by amending Section 7, relating to the power of the Authority to borrow money, and Section 10, authorizing the guaranty by the Commonwealth, and that the amending legislation be introduced and enacted in the manner stated above. If such legislation should be so enacted we believe that, assuming the relevant proceedings of the Authority and the trustees are properly taken, we would be able to express an opinion respecting Authority financing.

Very truly yours,

ELY, BARTLETT, BROWN & PROCTOR.

APPENDIX B.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-Six.

AN ACT TO AMEND THE ACT ESTABLISHING THE SOUTHEASTERN MASSACHUSETTS TECHNOLOGICAL INSTITUTE BUILDING AUTHORITY.

1 *Whereas*, the deferred operation of this act would tend to
2 defeat its purpose, which is, in part, to provide urgently needed
3 facilities for students at the Southeastern Massachusetts Tech-
4 nological Institute, therefore it is hereby declared to be an
5 emergency law, necessary for the immediate preservation of
6 the public convenience.

*Be it enacted by the Senate and House of Representatives in
General Court assembled, and by the authority of the same, as
follows:*

1 SECTION 1. Section 2 of chapter 703 of the Acts of 1964
2 is hereby amended by striking out the first sentence thereof
3 and by inserting in its place the following sentence: — There
4 is hereby created and placed in the department of education
5 a body politic and corporate to be known as the Southeastern
6 Massachusetts Technological Institute Building Authority,
7 which shall not be subject to the supervision or regulation of
8 the department of education or of any department, commis-
9 sion, board, bureau or agency of the commonwealth, except
10 to the extent and in the manner provided in this act.

1 SECTION 2. Section 4 of said chapter 703 is hereby amended
2 by striking out paragraph (k) thereof and by inserting in its
3 place the following paragraph: —

4 (k) To employ architects, consulting engineers, attorneys,
5 construction, financial and other experts, superintendents, man-
6 agers, and such other employees and agents as may be necessary
7 in its sole judgment, and to fix their compensation; provided
8 that all such expenses shall be payable solely from funds pro-
9 vided under the authority of this act; — and by striking out

10 paragraph (*m*) thereof and by inserting in its place the follow-
11 ing paragraph: —

12 (*m*) To make and enter into all contracts and agreements
13 necessary or incidental to the performance of its duties and
14 the execution of its powers under this act.

1 SECTION 3. Section 4 of said chapter 703 is hereby amended
2 by striking out paragraph (*n*) thereof and by inserting in its
3 place the following paragraph: —

4 (*n*) To invest in obligations of, or guaranteed by, the gov-
5 ernment of the United States of America any funds held by
6 it and not required for immediate disbursement;

1 SECTION 4. Section 7 of said chapter 703 is hereby amended
2 by striking out the first paragraph thereof and by inserting
3 in its place the following paragraph: —

4 The Authority is hereby authorized to provide by resolu-
5 tion at one time or from time to time for the issue of bonds
6 of the Authority for the purpose of paying all or any part of
7 the cost of a project or for the purpose of refunding outstand-
8 ing indebtedness of the Authority incurred under this act or
9 any other authority to finance or refinance a project; pro-
10 vided that the Authority shall not issue bonds the principal
11 amount of which, when added to the principal amount of bonds
12 and notes theretofore issued hereunder, excluding bonds and
13 notes previously refunded or being or to be refunded thereby,
14 shall exceed thirty million dollars.

1 SECTION 5. Section 10 of said chapter 703 is hereby amended
2 by striking out the last paragraph thereof and by inserting in
3 its place the following paragraph: —

4 The guaranty of the commonwealth provided pursuant to
5 such contract shall be of the payment of the principal of, and
6 interest on, all such notes and bonds as the same become due
7 and payable, and the full faith and credit of the commonwealth
8 is hereby pledged for any such guaranty; provided that the
9 total amount of notes and bonds so guaranteed shall not exceed
10 thirty million dollars in the aggregate for all projects of the
11 Authority, exclusive of bonds and notes previously refunded
12 or being or to be refunded thereby.

APPENDIX C.

AUGUST 29, 1966.

JOHN O'LEARY, Esquire
Assistant Legal Aide to Governor
State House
Boston, Massachusetts

DEAR MR. O'LEARY:

The undersigned are Chairman of the Board of Trustees of Southeastern Massachusetts Technological Institute and Chairman of the SMTI Building Authority respectively.

We are writing to notify you that both Boards have unanimously approved the recommendations of Bond Counsel, Ely, Bartlett, Brown & Proctor, as set out in their letter to Attorney Patrick H. Harrington and dated August 19, 1966, a copy of which has already been furnished to you. Both Boards have also unanimously approved the legislation draft prepared by Bond Counsel and the changes recommended therein.

Approved also by the Boards is the proposed reduction in borrowing authority as spelled out in Chapter 703 of the Acts of 1964 from \$35 million to \$30 million.

We respectfully request that Governor Volpe initiate action to make the changes referred to above by way of a special message.

Very truly yours,

WILLIAM F. LONG, JR.,
Chairman, SMTI Trustees.

RALPH A. ROBERTS,
Chairman, SMTI Building Authority.