

# MAINE STATE LEGISLATURE

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STATE OF MAINE.

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REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1908.

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per cent, as such court or justice may allow the receiver or agent, first, in the payment of accrued indemnity claims upon certificates or policies, or if insufficient to pay such claims in full, they shall be paid pro rata; second, if a balance remains after the payment of such claims, such balance shall be distributed to the holders of certificates then in force, pro rata, in proportion to the total payments by each policy-holder after first paying all expenses incident to such distribution. If, upon the thirty-first day of December of any year, the reserve fund on any such corporation is found to be less than the amount of one assessment or periodical call upon all of the members thereof, said corporation shall, within one year thereafter, collect from its members a sum sufficient to bring said reserve fund up to one assessment or periodical call upon all its members, and deposit the amount with the treasurer of state to the credit of said fund."

The only place in said section 126, where the word assessment appears previous to its use in the clause we are now trying to interpret, is in the early part of said section 126, where after providing that there shall be a reserve fund thus kept on deposit with the treasurer it says: "for the creation of which (referring, of course, to said reserve fund) it shall on or before the thirty-first day of December of each year deposit with the state treasurer not less than ten per cent of the total receipts on assessment made to pay indemnity claims for the year then ended" etc., etc.

This clearly refers to assessments made to pay indemnity claims in express terms. I am, therefore, forced to the conclusion that the words, "one assessment or periodical call upon all of its members," used in connection with how far the reserve fund may be reduced refers to assessments made to pay indemnity claims in the early part of said section 126.

#### FRATERNAL BENEFICIARY ASSOCIATIONS.— DEPOSIT WITH STATE TREASURER.

*Hon. S. W. Carr, Insurance Commissioner, Augusta, Maine:*

DEAR SIR:—I have the honor to report to you, in answer to your inquiry as to whether or not the deposit of \$1,000 with the treasurer of the State of Maine by fraternal beneficiary asso-

ciations as specified in R. S., chapter 49, section 139, is one and the same deposit specified in R. S., chapter 49, section 140, as the deposit of fifteen per cent of total mortuary receipts for the year ending December 31st.

After an investigation of the statutes in question it is the opinion of this department that the deposits referred to are not one and the same. Said section, 139, reads as follows:

"No association hereafter organized under the provisions of sections one hundred thirty-five and one hundred thirty-six shall incur any liability or issue any benefit certificate until it has received from the insurance commissioner a certificate to the effect that it has complied with the requirements of law and is duly authorized to transact business in this state. Before such certificate is granted, the association must present satisfactory evidence to the insurance commissioner that it has established mortuary assessment rates which are not lower than those now indicated as necessary by the national fraternal congress mortality tables and that at least five hundred persons have each paid one advance mortuary assessment on the rates so established and become a bona fide member of a local branch of the association, and that it has deposited with the treasurer of state at least one thousand dollars as a part of its emergency or reserve fund for the benefit and protection of certificate holders in said association, which fund shall be held and used as hereinafter provided."

Said section, 140, reads as follows:

"Each such association organized under the foregoing provisions, after March twenty-one, nineteen hundred and one, shall, on or before the thirty-first day of December in each year, deposit with the treasurer of state to the credit of its emergency or reserve fund not less than fifteen per cent of its total mortuary receipts for the year then ending, until the amount so deposited amounts to not less than fifty thousand dollars. These amounts shall be deposited in such interest bearing securities as any insurance company or savings bank may from time to time by law invest its fund in, and the securities shall be held in trust by the treasurer of state, but the association shall have at all times the right to exchange any part of said securities for others of like amount and character, and the income from said

fund shall be paid by said treasurer to the association. When deemed advisable by the majority of the directors, or other officers corresponding thereto, such part of the fund as may be considered necessary, may with the written approval of the insurance commissioner, be applied from time to time to the payment of death benefits but for no other purpose; provided, however, that such fund shall not at any time be reduced below an amount equal to one assessment or periodical call upon all of its members, nor to less than one thousand dollars. The insurance commissioner shall annually in February, certify to the treasurer of state, the minimum amount of reserve fund required to be kept on deposit in the treasury by each such association doing business under this chapter. If said association shall neglect for sixty days to satisfy any judgment against it, in any court in this state, then the said treasurer shall convert into money any of said securities, and forthwith satisfy such judgment, and said association shall not transact any further business until said deposit is restored. When any such association shall discontinue business, any justice of the supreme judicial court may appoint a receiver or agent to administer any unexhausted portion of such fund which shall be used, less compensation not to exceed five per cent, as such court or justice may allow the receiver or agent; first, in the payment of accrued, mortuary or indemnity claims upon certificates or policies, or if insufficient to pay such claims in full, they shall be paid pro rata; second, if a balance remains after the payment of such claims, such balance to be distributed to the holders of certificates then in force, pro rata, in accordance with the total mortuary payments of said members, after first paying all expenses incident to such distribution. If, upon the thirty-first day of December of any year, the emergency or reserve fund of any such association is found to be less than the amount of one assessment or periodical call upon all the members thereof, said association shall, within six months thereafter, collect from its members a sum sufficient to bring said emergency or reserve fund up to one assessment or periodical call upon all its members, and deposit the amount with the treasurer of state to the credit of said fund."

It will be observed that the deposit of \$1,000 to be made with the treasurer of State under said section 139, is a deposit

required before the insurance commissioner can give his official certificate to the association, and it must be made before the association shall incur liabilities or issue any benefit certificate, because before the association can thus engage in business, it must receive the certificate from the insurance commissioner. Said section 139, in express language states that this \$1,000 is a part (and therefore not the whole) of the emergency or reserve fund.

The deposit with the treasurer of state of the fifteen per cent of the total mortuary receipts for the year ending December 31st, noted in said section 140, appears to be a further, distinct and an annual deposit required of the association. It is credited to the emergency or reserve fund and therefore is another part thereof. It is a deposit made annually after the association has been organized and appears to be entirely additional to the said deposit of \$1,000 provided for in said section 139.

#### STATE ROAD MATTER.

*Hon. Paul D. Sargent, State Commissioner of Highways,  
Augusta, Maine:*

DEAR SIR:—Referring to your inquiry concerning the State road law it would seem to us that under Public Laws of 1907, chapter 112, provision is made for an available fund for permanent road building consisting of three factors, as follows:

(a) A portion of the amount annually raised and appropriated by the city for the repair of its highways, this amount depending upon the valuation of the city; (b) a special appropriation by the city equal to 50% of the amount required to be set apart, and herein denominated as (a); (c) the fund which comes from the State.

Considering the situation all over the State and the various parts of the State road law it would seem to us technically that we must advise that all these funds as a joint fund should be spent under the act in question, practically under your direction. To establish a different precedent would be unwise if our position is tenable. It seems to us that the State road law justifies our position. See for example, Public Laws 1907, chapter 112, section 7, where the fund of the various parts above cited is noted as "a *joint fund* for the permanent improvement," etc.