

MAINE STATE LEGISLATURE

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STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1910.

AUGUSTA

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1910

bonds. The corporation is not yet making the earnings specified in subdivision 5, Sec. 23, Chap. 48 of the Revised Statutes as amended by Chap. 11 of the Public Laws of 1909."

Your statement of fact does not contain all of the elements found in the amendment made by Chapter 11 of the Public Laws of 1909, for you do not state that the corporation is actually conducting in this State the business for which it was created. You do say, however, that the corporation is not yet making the earnings specified in the amendment of 1909. Your inquiry is as to whether the bonds of this corporation are legal investments for savings banks in this state. It is my opinion that they are not.

You ask certain other questions as to the legality of savings banks investing in such bonds regardless of the ratio of the total authorized bond issue to the total value of the property; and also as to the legality of savings banks investing in the same if the total authorized bond issue does not exceed 60 per cent. of the total value of the property.

After reaching the conclusion which I have above stated, that these bonds are not yet in any way a legal investment for savings banks in Maine, it seems to be unnecessary to consider the inquiries last referred to.

Respectfully yours,

WARREN C. PHILBROOK,
Attorney General.

OFFICE OF THE ATTORNEY GENERAL.

WATERVILLE, ME., July 22, 1909.

HON. WILLIAM B. SKELTON, Augusta, Maine.

SIR:—I have your favor asking my opinion, upon the following statement of facts and question.

"A corporation included within that class specified in Chap. 48, Sec. 23, sub-div. 6, f, of the Revised Statutes, has two classes of capital stock, of which there is now outstanding \$60,000 of preferred stock, and \$150,000 of common stock. Dividends at the rate of six per cent. per year are being earned and paid on the preferred stock; no dividend has ever been declared on the

common stock. All earnings otherwise available for that purpose, being put back into the property.

Question. Is this preferred stock a legal investment for the savings banks of this State under the statute above referred to?"

I have examined the history of this statute, the decisions of our own courts, the statutes of other states which attempt to regulate the investment of savings banks funds and the decisions of those states in which such regulations are attempted, and in no instance do I find, by decisions of the courts or otherwise, anything which throws satisfactory light upon your question. It would seem necessary for us to consider this a matter of novel impression and base an opinion simply upon a few broad principles which should obtain in matters like these.

It is self evident that the legislature of Maine from time to time has endeavored to throw around the investment of savings bank funds the strictest safeguards possible. It would not seem proper to attempt to enlarge the statute in matters like these but rather to follow with strict construction the rules which the legislature has laid down. Those rules make no distinction between preferred and common stock in the provision to which you refer. The legislature has said "in the stock of any corporation * * * * which earns and is paying a regular dividend of not less than five per cent. a year." The legislature does not say that the investment may be made where a part of the stock earns and pays such dividend.

Another danger suggests itself to my mind if savings banks were permitted to invest in preferred stock earning and paying five per cent dividends when no such dividend was being earned and paid on the common stock of the same corporation. I refer to the fact that our general corporation law not only provides for the creation of two or more kinds of stock, but also provides that corporations may determine the voting powers of those kinds of stock. The powers of common stock and of preferred stock relative to voting vary through a wide range in many of the corporations under our observation and jurisdiction. The power of common stock over preferred stock may be quite extensive in the first instance and if proper charter reservations are made in the issue of the preferred stock those powers may be expanded or restricted. It would seem to me that with such corporate powers as might exist in the common stock there

could be no absolute assurance that the preferred stock would continue to pay the dividends required by law even though they were earning them. It might be argued that the statutory provision under discussion is in the present tense as to the time when the stock is offered for investment, but it seems to me that this view pushed to its extreme would render the statute idle. If stock at the brief moment when it is offered for investment is earning and paying the legal dividend that would hardly seem to meet the requirements of the statute. The intent of the law must be to provide that the stock has under ordinary circumstances not only the earning capacity but that the dividend so earned has been and will continue to be paid under ordinary circumstances. If the corporation should reserve to holders of its common stock the power to declare dividends, or other similar powers which would be imminent to the value of the preferred stock, then there would be no security or safety in such an investment. Some particular corporation might by its certificate of organization and by laws have thrown around its preferred stock all proper safeguards but your question is broad enough to refer to all corporations of the class under discussion and no safe rule could be laid down where conditions may be so variable.

The reasons suggested viz., the lack of explicit authority in the statute, the wisdom of strict construction in such a case, and the possible powers of the common stock over the preferred stock, lead me to advise that the preferred stock in the statement of facts submitted to me would not be a legal investment for savings banks in this State.

Respectfully yours,

WARREN C. PHILBROOK,

Attorney General.

OFFICE OF THE ATTORNEY GENERAL.

Waterville, Me., Sept. 10, 1909.

Hon. Payson Smith, Augusta, Maine.

SIR:—You have called my attention to a certain situation relating to a free high school in the town of S and have submitted to me what purport to be copies from the records of