

# MAINE STATE LEGISLATURE

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January 6, 1915

To Joseph W. Simpson, Treasurer of State  
Re: Liability on Bond

In relation to the question which you and Mr. Newbert submitted to me as to the liability of the state treasurer on his bond, as to whether he is an insurer of the safety of such funds in his possession or whether he and his sureties are only liable for his lack of good faith and reasonable care and diligence in the discharge of his trust, I have examined the authorities in this state and am of the opinion that the state treasurer is not an insurer of the funds of the state in his custody.

Our Court in case of Cumberland vs. Pennell, 69 Maine 357, very fully discussed the liability of public officers of this character and declared the law to be that they are not insurers but are required only to bring to the discharge of their duties

"that prudence, caution and attention which careful men usually exercise in the management of their own affairs,"

and are not responsible for any loss occurring without any fault on their part. The rule seems to be otherwise in some states, but our Court in the case above referred to adopted the following:

"That the treasurer's degree of responsibility was simply that which the common law imposed upon him; that the statutes of this state do not extend or enlarge it; that his official bond does not include his responsibility but simply affords security for the performance of his legal obligations."

The Court also, in speaking of the official bond of the state treasurer in Mechanics Bank vs. Hallowell, 52 Maine 545, said:

"The bond required is not so much for the money as for the faithful discharge of his duty in reference thereto. For the one it would be entirely inadequate while for the other it might be amply sufficient."

It would seem absurd that the state should hold its treasurer an insurer against all losses of public funds and of the solvency of all its banks and only pay him \$2000. a year and I further think that Section 58 of Chapter 2 which limits the amount he shall deposit to a bank to \$20,000. indicates clearly that the legislature never thought of holding the state treasurer responsible except for the exercise of reasonable care and diligence and the exercise of that prudence, caution and attention which careful men bring to the management of their own affairs of like magnitude.

William R. Pattangall  
Attorney General