

MAINE STATE LEGISLATURE

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May 20, 1920

To Hon. Frank L. Palmer, Bank Commissioner
Re: Bonds Secured by Certain Mortgages

We have your inquiry as to the legality* under the provisions of Chapter 52, Section 27, 3, f (2) of the Revised Statutes, of a bond secured by a mortgage containing the following provisions:

"(1) for an amount of principal equal to 80% (a) of the actual cost, reasonable worth and replacement value to the Mortgagor of any permanent improvements or additions to its plants or property other than shares of stock, bonds or other securities, or (b) of the actual cost to the Mortgagor of such mortgage bonds or shares of stock (including said First and Refunding Mortgage Five Per Cent. Gold Bonds of the Walla Walla Valley Railway Company) so purchased and of the reasonable worth and replacement value of the property represented by such mortgage bonds or shares of stock; . . ."

You desire to know whether this language brings the bond within the provisions of the paragraph of the statute referred to, the next to the last sentence of which reads as follows:

"No bonds secured by an open mortgage shall be legal, under this section, unless the mortgage provides that the total amount of bonds certified and outstanding under it shall at no time exceed eighty per cent of the amount of cash expended upon the road."

In our opinion the language of the mortgage is not sufficient for this purpose for two reasons.

First; The statute places a limit of eighty per cent of the amount of cash expended upon the road; the mortgage permits eighty per cent of actual cost, reasonable worth and replacement value. This is a materially different provision.

Second; The mortgage permits the computation of the percentage named upon another basis than actual cash expended on the road, namely, the actual cost of the mortgage bonds or stock of other corporations. . .

Fred F. Lawrence
Deputy Attorney General

*Investments of savings banks.