

MAINE STATE LEGISLATURE

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6th June 1922

To Hon. Fred F. Lawrence, Bank Commissioner
Re: First Mortgage Bonds

Replying to the question submitted in your letter of the 5th instant relative to the legal construction to be given to the words, "first mortgage bonds", as used in Section 27, Three, I, of Chapter 52 of the Revised Statutes, you are advised that in the opinion of this department the bonds mentioned are not first mortgage bonds within the meaning of the statute referred to and are not therefore legal investment for Maine Savings Banks.

According to the information furnished, the bonds in question are subject to a prior mortgage given to secure the performance of a power contract with a street railway company, which prior mortgage constitutes an incumbrance on the property.

The law seems to be well settled that "first mortgage" means "first lien", and when bonds are sold in the market as first mortgage bonds, all persons understand them to be first liens. When one speaks of lending money on first mortgage, no thought of anything but a first lien is entertained.

"This meaning of 'first mortgage' is so thoroughly grounded as to lead to the sequence that a second mortgage is understood to be one without intervening liens between it and the first".

When a contract calls for a first mortgage it means one prior to all other liens.

Appeal of Green, 99 Pa. 342-347.

"First mortgage bonds mean bonds secured by a first mortgage."

Bank of Atchison County v. Byers
139 Mo. 627; 41 S.W. 325-331

At first glance the case of Commonwealth v. Williamstown, 156 Mass. 70, might seem to be contrary to the view expressed above, but an examination of that case will show that it had many unusual features and that it was decided upon the ground that the fact that the railroad company had already issued a bond of indemnity to the Commonwealth was of such notoriety as to be regarded as an historical fact well known to the inhabitants of Williamstown, and that the bonds in question in that case were the particular bonds contemplated by the vote of the town.

We note that while the circular offering these bonds issued in 1916 describes the mortgage securing them as a "first mortgage",

the circular issued May 16, 1922, by the same bond house does not claim them to be "first mortgage bonds" but "mortgage gold bonds", and in reference to the opinion of counsel quoted in the circulars, the same change has been made. The opinion of counsel quoted in the letter to you from the bond house nowhere speaks of these bonds as "first mortgage bonds", but distinctly states that the mortgage securing them is subject to a prior mortgage.

We fail, therefore, to see any reason for claiming that the bonds in question are first mortgage bonds.

William H. Fisher
Deputy Attorney General