PUBLIC DOCUMENTS

OF THE

STATE OF MAINE

BEING THE

REPORTS

OF THE VARIOUS

PUBLIC OFFICERS
DEPARTMENTS AND
INSTITUTIONS

FOR THE TWO YEARS

JULY 1, 1930 - JUNE 30, 1932

STATE OF MAINE

REPORT

OF THE

Attorney General

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for the calendar years

1931-1932

Answering *Question* 5, we call your attention to sec. 111 wherein it is provided that,—

"For every loan made, a note secured by a first-mortgage of real estate shall be given."

It is possible that a second-mortgage might be taken where the association holds a first mortgage, provided that the amount borrowed on both mortgages does not exceed the amount of the shares of the borrower taken on a basis of not exceeding $200. This precise question has never been decided by the court and is not free from doubt.

In some cases, where a borrower desires to increase his loan above the maximum specified in the original mortgage, a new note and mortgage for the full amount has been made and the first note and mortgage canceled. Such we believe to be the better practice although it is true that the net result of the situation would be the same if two notes and two mortgages were taken for the same total amount. If the association has reason to fear that some junior incumbrance might come in ahead of a new first-mortgage surely a subsequent increase of loan on a supplemental mortgage to the association would be inadvisable.

BANKING LAW—LOAN AND BUILDING ASSOCIATIONS

June 17, 1932

To Eugene L. Bodge, Esq.
Portland, Maine

The deputy and myself have given very serious consideration to your letter of June 10 suggesting that we reconsider the opinion of this department, under date of May 25, 1932, in which we ruled against the general power of a Maine loan and building association to borrow money except from another loan and building association, with the approval of the Bank Commissioner under sec. 108 of ch. 57. You cite authorities defining the general powers of such association.

The question is not without difficulty and we should welcome a court determination of the issue. We are constrained, however, to hold the same opinion which we have previously expressed.

It seems to us that the express provision of the statutes cited above vesting the associations with a limited borrowing power, by implication excludes a greater power.

Moreover our courts in at least two cases have defined the object of Maine loan and building associations in restricted language. In *Tibbetts v. Building Association*, 104 Me. 404, 409, the court speaks of the practice of the association, "Like that of similar associations in this state . . . . to accumulate from small contributions capital to loan to members for building purposes . . ."

Money borrowed from a bank is not "accumulated from small contributions."

Again in *Palmer v. Construction Co.*, 121 Me. 188, 190, the court quotes with approval a similar definition of the object of such associations from 9 Corpus Juris.

Our deduction from the discussion of the general power of such associations to borrow money, in 9 C. J., page 953 et. seq., is that the borrowing power is essentially limited. To extend to such associations the general right to borrow is to give them the right to enter into a quasi banking business and widely depart from the narrow specialized nature of their organization and purposes.

If the legislature intended to vest such associations with such power it should have said so, and if such power is advisable the legislature can create it; safeguarding it at the time with such restrictions as it thinks best.

Fundamentally, it seems to us that a loan and building association is by no means equivalent or identical with a corporation organized under the general law. That, in a nutshell, is where our views apparently diverge from yours.

As to your suggestion that our opinion comes at an inopportune time, we can only say that the Bank Commissioner was pressed for a ruling on the point by one of the associations and, therefore, had to ask us for our opinion. Inquiry and litigation bringing about a re-examination of existing assuptions and practices often produce disturbing results. Happily any error in judgment on our part in our opinion as previously rendered and now confirmed, can be readily corrected by court or legislative action in due course.

BANKING LAW—SEGREGATED ASSETS OF TRUST COMPANIES

October 18, 1932

To Hon. Sanger N. Annis
Bank Commissioner

I am glad to confirm as the official opinion of this department the memorandum given you under date of October 11, 1932, concerning the suggested action of directors of trust companies with relation to segregated assets, as follows:

1. A Maine trust company, subject to the provisions of ch. 57, sec. 61 to 96 inclusive, R. S. 1930, may lawfully withdraw assets segregated and set apart as security for savings deposits and pledge them to secure a loan, the proceeds of which may be used for the general purposes of such trust company, provided assets of sufficient value be substituted for those withdrawn.

2. The character of the assets so substituted is a matter within the discretion of the directors of the company, acting in good faith. In case of doubt arising in the minds of directors as to whether or not certain assets could properly be used in such substitution, the judg-