

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA

May 24, 1934

Hon. Thomas A. Cooper  
Bank Commissioner  
Augusta, Maine

Dear Mr. Cooper:

In response to your inquiry relative to the matters contained in letter of May 7 from K. K. Carrick, Secretary and General Counsel, Federal Reserve Bank of Boston, I am pleased to advise you that Sections 67 and 68 of Chapter 27, Revised Statutes, provides certain capital and surplus requirements for newly organized banks and trust companies, and permit the exercise of certain fiduciary powers.

I do not understand that the requirements of these sections have been in any way modified by any subsequent legislation. There is no specific mention of the capital and surplus required for the exercise of fiduciary powers, but I think it is safe to say that the exercise of fiduciary powers can only be exercised by a bank organized with the capital and surplus required by the aforesaid sections.

Inquiry is made as to whether a trust company may be organized in Maine with only preferred stock, and without any surplus under the provisions of Chapter 286 of the Public Laws of 1933. My answer to this inquiry is in the negative. In this connection I would call your attention to the 4th paragraph of said chapter, which is as follows:

"Prior to or simultaneously with the retirement of such preferred stock, the company, without further action on the part of the holders of stock of any class, or on the part of the bank commissioner (if its articles of organization, as amended, so provide) may, and to the extent necessary to maintain the capital of the company at the minimum required by law, shall declare on the common stock, out of surplus or net profits of the company, a dividend in an amount equal to the par value of the preferred stock so to be retired, payable at the time of or in connection with such retirement in common stock of the company, pro rata to the holders of common stock."

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The 6th paragraph provides that,--

"The holders of such preferred stock shall not be held individually responsible as such holders for any debts, contracts or engagements of such company, and shall not be liable for assessments to restore impairments in the capital of such company and such preferred stock shall not be subject to assessment, as <sup>now</sup> provided by law with reference to common stock and the holders thereof."

Paragraph 7 of said chapter provides that,--

"No dividends shall be declared on common stock of such company until cumulative dividends on the preferred stock shall have been paid in full; and, if the company is placed in voluntary liquidation or a conservator or a receiver is appointed therefor, no payment shall be paid to the holders of the common stock until the holders of the preferred stock shall have been paid in full the par value of such stock plus all accumulated dividends."

The foregoing provisions undoubtedly indicate that there shall be both common stock and surplus in addition to the preferred stock in any given case.

I am Trusting that this will answer your inquiry,

Very truly yours,

Deputy Attorney General

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DEPARTMENT OF THE ATTORNEY GENERAL  
STATE OF MAINE

