

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA

September 30, 1935

Hon. Walter S. Glidden
Bath, Maine

My dear Walter:

Answering your telephonic inquiry as to whether or not the Trustees of the Old Folks Home in Bath would be justified in loaning a portion of the institutional funds, and taking as security therefor a third mortgage on real estate, I have to inform you that in my opinion such an investment would be unsuitable and should be avoided.

The funds you mention appear to be in the nature of a trust fund given for a certain purpose. In the case of Mattocks v. Moulton, 84 Me., 552, our Court has said:

"In the light of experience, various kinds of investments have come to be regarded by intelligent and prudent men as unsuitable for trust funds. The Courts have simply given expression to this general sentiment. Second mortgages are considered unsuitable, as they subject the trust estate to the possible necessity of raising funds to pay off the first mortgage."

In the instant case it is evident that funds would have to be raised, not only to pay off the first mortgage, but also to take care of a second mortgage. Consequently, it seems to me the Trustees would not be justified in using the trust funds for the purpose and in the manner you mention.

Sincerely yours,

Deputy Attorney General

SLH H