

MAINE STATE LEGISLATURE

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June 7, 1940

Mr. Fessenden

Mr. Franz U. Burkett, Attorney General

Subject: State Auditor's Memo of June 3, 1940.

You have requested me to look into the matter of statutory authority for or against the entry of the item of \$700,451.86 credited to Sinking Fund Reserve on page 20 of the Ernst & Ernst report.

The State Auditor states that in his opinion, the entire net profits of the Liquor Commission become general revenue, whether or not such net profits were earned prior to June 30, 1935.

In my opinion, Chapter 24 of the Public Laws of 1935 is determinative of the disposition of the annual net profits of the Commission. In general, it is provided that such net profits shall become general revenue of the State. However, there is a proviso which, to my mind, constitutes an exception to the effect that the net profits made prior to the close of books June 30, 1935, shall be used in establishing a working capital for the purposes of carrying on the activities of the Liquor Commission. According to page 6 of the Ernst and Ernst report, the amount of the net profits prior to June 30, 1935 was \$364,372.18.

In my opinion, the proviso indicates one of two dispositions of these profits: The profits are either (1) general revenue in the first instance which was appropriated for use as working capital, or (2) these profits never become general revenue. In either case, I do not see how this item of \$364,372.18 can become part of the Sinking Fund, although, of course, it is an asset of the State.

Sections 101 and 102 of Chapter 2, P. S. 1930, provide for the items that shall be used for the Contingent Fund and for the Sinking Fund. If the item of \$364,372.18 did not become general revenue, it cannot be credited either to Contingent Fund or Sinking Fund unless the item consists of a balance of an unexpended appropriation. Obviously, since the item is not unexpended appropriation, the only justification for crediting it to Sinking Fund Reserve would be if it was general revenue. On the other hand, if the item was general revenue of the State, we find that Chapter 24, P. L. 1935, specifically states that it shall be used as working capital

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by the Liquor Commission. Inasmuch as it designates a particular purpose for which the money shall be used, and since such particular purpose is not set forth in Sections 101 or 102 of Chapter 2, R. S. 1930, as being an item subject to credit to the Contingent Fund or Sinking Fund, I do not see how it can be credited to the Sinking Fund.

The item, of course, is an obvious asset of the State, but as stated above, I do not see how, under existing law, it can be called a Sinking Fund item.

I have inquired into the item of \$250,000 appropriated to the Liquor Commission by Chapter 300, P. L. 1933, as amended by Chapter 24 of the Public Laws of 1938, which item was to be repaid by the Liquor Commission by the payment to the State of \$50,000 each year for five years, and I have been informed by Mr. Wilkinson that the Liquor Commission never used any part of the \$250,000 and consequently does not owe the State Treasury any money on this account. I was told that no actual capital was needed by the Liquor Commission when it started its operations, as the various merchants extended credit for the purchase of its fixtures and inventory, and that the early business done by the Liquor Commission was such that it was able to meet its bills without the use of the capital provided by the Legislature.

You will note that I have not set forth any opinion with respect to the net profits of the Commission in the amount of approximately \$350,000 earned subsequent to June 30th, 1938, but which amount appears to be tied up in the inventory and assets of the Liquor Commission. This item should, by law, be general revenues of the State, but, of course, so far as the State Treasury is concerned, it must be an account receivable until paid in to the Treasury by the Liquor Commission. In one sense of the word, it is general revenue of the State of Maine, but if general revenue of the State means revenue paid in to the State Treasury, the item is not, as yet, actual revenue to the Treasury. So far as the Treasury is concerned, it is an account receivable.

J. S. S. P.

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