

MAINE STATE LEGISLATURE

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July 3, 1940

Hon. William D. Hayes
State Auditor
Augusta, Maine

Dear Mr. Hayes:

On June 27th, you forwarded to me a memorandum containing some six specific questions following a conversation which we had the previous day which covered most of the matters included in your questions. I have since given these matters some thought and have had a conference with Mr. Rodgers; and the following, taking up the questions in order, is my best judgment on each of them:

1. Where any cash items, such as deposits in banks, have been carried as assets I would think it would be advisable to have a Council Order before the whole or any part of these items were charged off; and the above opinion would apply both to unliquidated balances of the general funds of the State in closed banks, and to savings accounts and certificates of deposit representing trust funds.

In cases where the head of a department has authority to abate a tax, or compromise a tax, a situation which occurs in the assessor's office and the inheritance tax division, I would think that all that would be necessary would be to have a memorandum or statement from the department head.

2. I do not know of any legal requirement for setting up a reserve on the books and in the balance sheet of the State to cover probable future losses from accounts in closed banks not yet entirely liquidated. But it would seem to me to be good accounting and good business to have such a reserve account, and I would think it would be well for the auditor and the

controller to work out, between them, a system and method of setting up and handling such an account.

3. It would seem to me that if an account in a closed bank not yet liquidated had been credited to the sinking fund reserve, when the loss is determined such loss should be a proper charge to the sinking fund reserve. However, it is not my opinion, following along the lines of previous conferences with you, that such items should be credited to the sinking fund reserve in the first instance.

4. In the first instance, when any loss of trust funds is determined, I believe that the loss should be charged against the funds rather than against the current yearly income of the funds.

5. It would seem to me that the question of how trust funds should be set up on the books of the State - that is, whether they should be carried at cost or par, is a matter for decision between the Treasurer, the Controller and the Auditor rather than a legal problem. My own idea has always been that these funds should be carried at cost in cases where they are purchased by the State.

6. Following the extended discussion which we had as to the method of taking care of loss or gain of securities held in trust funds, I am of the opinion that such gain or loss should be used to increase or diminish the current income from the funds. And I further believe that after you have agreed on the method of handling securities - that is, whether you should carry them at cost or par, the securities now in trust funds should be valued on the same basis. I assume there will be cases where securities were turned over to the State when the fund was created, and that you will have no information as to the cost. These, of course, you will have to set up at par value.

You and I had quite an extended discussion as to what the policy of the State should be in the matter of restoring trust funds to which losses have occurred by reason of liquidation of banks, and you called my attention in your memorandum to the fact that some of the funds intended for the retirement of bonds on the Carleton Bridge are in this category. As I explained to you previously, it is my opinion that the matter of the restoration of these funds is something for the Legislature to decide, and it would seem to me that a general policy in regard to all of them should be adopted, and

Hon. William D. Hayes, State Auditor
July 3, 1940 - Page 3

if it is decided to restore, by means of money raised by taxation, any losses suffered in any one of these funds, all of them should be treated alike and also restored. My opinion, for what it is worth, is that they should all be restored.

I am sending a copy of this letter to Mr. Rodgers and if any part of it would seem to require further discussion or clarification, I should be very pleased to sit down with either or both of you at any time, and if you can convince me that any of the opinions which I have given in this letter are not in accord with the best method of handling any of these situations, I should be pleased to revise my opinion and advice.

Very truly yours,

Franz U. Burkett
Attorney General

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