

# MAINE STATE LEGISLATURE

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July 16, 1940

To William D. Hayes, State Auditor  
Re: Limitation on State's Deposits

. . . You quote the provisions of Section 75, Chapter 2, R.S., relating to the deposit of State money by the State Treasurer.

In determining the amount of State money on deposit in any bank at any time, it is my opinion that you should depend upon the net amount shown by the Treasurer. It would not seem practicable to me to adopt any other system which would require you to be constantly checking with the banks. Under the oral opinion which I gave to the present Treasurer of State, after conference with him and the Bank Commissioner sometime ago, the 25% limitation on deposit does not apply to checking accounts subject to immediate withdrawal and available at any time for the purpose of paying bills of the State, so that the question of determining the exact amount on deposit at any time is not important as far as the question of compliance with Section 75 of Chapter 2 is concerned.

In determining the amount of capital and surplus of any bank, it is my opinion that undistributed profits should not be considered as any part of that surplus. I do not believe it is practicable to try to compute the amount of capital and surplus of any bank in between the times when it makes its required reports to the Bank Commissioner, or its affairs are examined by that official. In the amendment to this section which I have drafted for the consideration of the coming session of the Legislature, I have considered the advisability of providing that the Treasurer should obtain from the Bank Commissioner, in the case of State banks, and from the Comptroller of the Currency in the case of National banks, the amount of capital and surplus which he should use in his computations. But this does not now seem necessary, if we exempt the banks in which money is kept on checking account from the provisions of the limiting act. I do think that the Treasurer should adopt the practice of obtaining from these officials the figures which he should use, and the Bank Commissioner assures me that those figures are always available.

July 18th. Supplementing my memorandum in regard to the 25% limitation, it is my opinion that the limitation as now provided for in the statutes does cover all money on deposit by the State Treasurer, including Trust Funds. Commissioner Beck at our conference raised the point that it did not cover these Trust Funds, but I felt so strongly that it did and should, that in the amendment which I have drawn I have inserted the words, "including trust funds", after the word "moneys" in the second line of Section 75, R. S. Chapter 2. . . If you think that some other changes should be made in it to further clarify the situation I should be very pleased to have your comments.

Franz U. Burkett  
Attorney General.