

# MAINE STATE LEGISLATURE

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STATE OF MAINE

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REPORT

OF THE

ATTORNEY GENERAL

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for the calendar years

1941--1942

Here we have a statute expressly referring to and providing for apportionment of stock of operating and operated roads, and it is very clear that the legislature intended apportionment to be on the basis of capital stock held in both types of road.

This opinion is given further force by the history of the railroads and of this legislation. When the railroads were constructed the municipalities contributed heavily to their construction, but the State contributed comparatively nothing. The purpose of this legislation was to try and return to the municipalities, to some extent, some of the money they had invested in the railroads.

FRANK I. COWAN  
Attorney General

April 1, 1941

Frederick G. Payne, Esquire  
Commissioner of Finance and  
Budget Officer  
State House

My dear Fred:

I have your letter of March 21st, in regard to the State Trust Funds. The State has always regarded itself in the light of a real trustee, and has usually accepted complete responsibility as insurer of these funds. It has not always gone the whole way, however, as insurer. For instance, when, through improper conduct, the Hebron Sanatorium lost the Hill fund of \$200,000 in 1915, the State did not accept the responsibility and restore the fund.

The majority of these funds are out right gifts to the State or to the institutions and, under such circumstances, we are in no danger of losing them through legal action. Some, however, and I am not prepared to say offhand which ones, are endowments so created that failure to conform to the wishes of the giver will endanger the fund itself.

Where the condition of the gift has been that the State would guarantee a certain amount of interest annually, or that the State, in lieu of interest, appropriate a certain amount of money which would be the equivalent of four, five or six percent, any failure on the part of the State to conform to the terms of its contract will jeopardize the fund. If, however, the amount of the appropriation has been figured as, approximately, four, five or six percent of the principal of the fund, and there was no condition in the gift that any such sum of money should be raised by the State annually, failure to appropriate such an amount in any one year cannot weaken the legal rights of the State in the principal. Moreover, where the State has itself created a fund it can thereafter do with it as the legislature sees fit because, unless I

have forgotten some specific instance, there are no funds created by the State of such a nature that any person, or group of persons, or any institution, has obtained contractual rights against the State that can be enforced.

The State has encouraged some of the institutions to proceed on the theory that a certain annual amount equivalent to some fixed percentage of the principal of a trust fund will be received annually for the benefit of the inmates of the institution. This has been a fixed policy for many years. The State can change that policy as I suggested above at any time, and the only question that can arise is one concerning the wisdom of such a change.

If I have not given you the answers you want, let me know and I will go into the matter further.

Very truly yours,

FRANK I. COWAN  
Attorney General

April 14, 1941

The Attorney General  
William D. Hayes, State Auditor

In Publication of Municipal Audits.

I have your memorandum of April 11th. I do not know of any law preventing any head of a department from disclosing the private information contained in his department, but I seriously question the wisdom of making such public disclosures.

My personal feeling is that when you make an audit for a town you are acting in an official capacity. When the town receives the report, that report immediately becomes a public record. If the town officials for any reason conceal the contents of the report the auditor might very well feel it his duty to make the facts public. In the meantime, as I said, I believe the information you acquire should be regarded as confidential. This, however, does not in my opinion go so far as to preclude your delivering such information to any other State official who may have reason to see it.

F. I. C.

April 21, 1941

State Liquor Commission  
98 Water Street  
Augusta, Maine

Gentlemen:

In considering the matter of your inquiry as to whether or not the State Liquor Commission may properly grant rebates of excise taxes