

MAINE STATE LEGISLATURE

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June 11, 1948

Frank I. Cowan, Attorney General

Belmont Smith, State Treasurer

Re: Plan to Settle Affairs of City of Eastport. Memorandum
Supplemental to mine of June 10th.

In your memo of June 4th, you have two questions. The first reads as follows:

"Q. (1) Does the 75% of open account creditors have any bearing as to your opinion of June 3, 1948 in which you said: 'when all parties have formally agreed'?"

Answer: My memo of June 10th in regard to return by you to the proper parties of funds placed in your hands as custodian, takes care of this situation. Inasmuch as you accepted no responsibility in regard to the funds except the responsibility of any volunteer, and inasmuch as you are not personally to disburse the funds but are to turn them back on toto on proper order of the Board of Emergency Municipal Finance, you are not interested in the 75% proposition in connection with these particular funds.

Your second question is as follows:

"Q. (2) Does the State Treasurer have a right to accept bonds from the City of Eastport in payment for State taxes or other accounts?"

The answer to that is "no". Cooley on Taxation, Vol. 3, Paragraph 1252, reads in part as follows:

"The collector should receive for the taxes money only, unless the statute permits him to receive something different. Money is always understood in the tax laws when nothing else is mentioned. A tax-collector has not authority to receive in payment of taxes anything but such money as at the time is legal tender, or at least passes current; and statutes requiring state taxes to be paid in gold and silver, to the exclusion of legal tender treasury notes, have been fully sustained in several of the states. State or municipal bonds or the coupons therefrom, city or county warrants, etc., are not receivable in payment of taxes unless so provided by statute; but laws are sometimes

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passed making county or municipal obligations receivable for taxes or for some kinds of taxes, and when such laws exist, any obligations coming within their terms must be received, and a tender of them to the collector would discharge the lien of the tax. The same is true of state obligations which by their terms or by the law under which they are issued are receivable for taxes; the state in issuing them makes a contract with the creditors receiving them which it must abide by. But the collector cannot exercise the option of the taxpayer to pay in something besides money, in his own interest, and he cannot therefore make demands, which are by law made receivable for taxes, available to him in his settlement, unless he actually received them in payment.

So the collector has no right to receive the promissory notes of individuals, and such notes, if so received, do not operate as payment or discharge the tax, and are void as without consideration and contrary to public policy.

A bank-check is conditional payment only, and the tax will remain in force if the cheque is dishonored; and this rule has application equally as well to drafts."

A search of the statutes of Maine and the decisions of the courts on tax questions, fails to show any approval by the Legislature or by the courts of the payment of taxes in anything except legal tender.

Attorney General

FIC:GH
cc: Burkett
Hill