

MAINE STATE LEGISLATURE

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July 11, 1942.

Frank I. Cowan, Attorney General

Homer E. Robinson, Bank Commissioner

I have your letter of July tenth enclosing copy of memorandum sent to Mr. Beck by Mr. Fessenden; and also copy of circular which you issued under date of July first "To Trustees and Executive Officers of Maine State Banking Institutions" on the subject of War Damage Insurance.

The reason I asked for the copy of the circular was because the attorney for a loan and building association here in Portland asked me yesterday about the circular and called my attention to the fact that whereas the bank insurance statute has the words "fully insured", the loan and building insurance statute provides for requiring insurance against fire and lightning. Some of the local loan and building associations have sent out notices to their mortgagors requiring them to take war damage insurance.

Mr. Fessenden's memorandum of June 18th applied solely to R. S. Chapter 57, Section 39, which has to do with savings banks and reads as follows: "The trustees shall cause all real estate of an insurable character held by them absolutely, or in mortgage, to be fully insured, and the expense of such insurance in case of mortgage, if paid by the bank, shall be added to the amount of the mortgage debt to be refunded in case of redemption".

I have examined Mr. Fessenden's opinion and approve it fully.

R. S. Chapter 57, Section 119, applies to loan and building associations, and reads as follows: "The directors shall cause all real estate of an insurable character held by such association, absolutely or in mortgage, to be fully insured against loss by fire or lightning and the expense of such insurance in case of mortgage shall be added to the amount of the mortgage debt, to be refunded in case of payment or redemption. The words "by fire or lightning" expressly limit the meaning of the words, "to be fully insured against loss". Where the legislature has expressly limited the rights and powers of a corporation, the corporation can act only within those limits, and the loan and building association cannot, under this statute, require of mortgagors that the latter take out war damage insurance; neither can the association buy war damage insurance and charge it to the mortgagors.

This opinion, however, must not be construed as a suggestion that the loan and building associations have not the right, under their position as common law mortgagees, to fully protect the property to which, under our law, they have legal title. The loan and building associations have a complete, insurable interest in the properties on which they hold mortgages, and can take out war damage insurance to protect that insurable interest. However, they must pay for it themselves.

Frank I. Cowan
Attorney General

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Copy to A. W. Perkins
Commissioner of Insurance