

MAINE STATE LEGISLATURE

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September 28, 1942

Frank I. Cowan, Attorney General

George E. Hill, Chairman
Emergency Municipal Finance Board

I have your memorandum of September 26th in regard to funds of the City of Eastport in the custody of Belmont Smith, State Treasurer, by delegation from the Emergency Municipal Finance Board.

The Public Laws of 1933, Chapter 284, Section 2, provides that the purpose and object of the establishment of the Board is to enable the cities, etc. that have fallen into financial difficulties 1. To receive assistance from the State, and 2. To be re-established on a sound financial basis. The further purpose and object of the establishment of the Board is "to assure to the State the collection of the taxes due from the said cities, towns and plantations of the State".

We find, then, that the object of the legislation was not solely to protect the municipality that was in financial difficulties, but also to protect the State from loss under those circumstances, and one duty is just as important as the other. For the carrying out of the purposes of the act, the very broadest possible powers were conferred on the Board.

In July, 1941, it was decided to take certain funds which for some reason unknown to me had been kept hidden away in a bank, and place them in the hands of the State Treasurer. There were several reasons behind this act of July. First, it was considered to be improper to keep funds of the City of Eastport concealed in any such fashion. Second, the law expressly authorized the Board to take over and handle the financial affairs of the City of Eastport (see P. L. 1933, Chapter 284, Section 4) "to the exclusion of or in cooperation with any other local government or governmental agency". Third, the Treasurer of State was a bonded official, a member of the Emergency Municipal Finance Board, and seemed to be the proper person to be entrusted by the Board with the custody of these funds.

A further study of the subject lead this office to the opinion that the bond of the State Treasurer is not sufficient to cover his acts as custodian of funds of a municipality when delegated by the Emergency Municipal Finance Board to hold certain funds. You have, therefore, I understand, taken steps to have the Treasurer bonded in this new capacity.

September 28, 1942

It certainly does not follow that Mr. Smith is holding these funds in violation of law. The Board is expressly authorized to "take over and regulate the administration of the government of said cities, towns or plantations and the management of the financial affairs thereof". It may or may not do that by a Commissioner, but if it does it by a Commissioner its hands are not thereby bound and it can cooperate with said Commissioner to any extent it sees fit. In other words, it can turn over to the said Commissioner such functions as it sees fit and it can retain such functions as it sees fit. If it sees fit to take charge of all or any part of the funds of the City for the purpose of assuring "to the State the collection of the taxes due from said City" or to the end that the City may be "re-established on a sound financial basis" or for the purpose of providing that the City may "receive assistance from the State", the Board has full authority to so provide. Public Laws of 1933, Chapter 284, Section 8, contains the following language: "All powers and duties necessary to carry out the purposes herein set forth are hereby conferred on the board."

If the Board sees fit to have the Commissioner hold these funds, that is perfectly proper. If the Board sees fit to hold the funds as a Board and have them dispensed only by a vote of the Board or a majority thereof, that is proper. If the Board sees fit to place the funds in the temporary custody of one of its members, who happens to be the Treasurer of the State, that also is proper providing the Board fully understands that control of the funds is still in the hands of the Board and is not in the hands of the custodian.

In my opinion, the present method of deposit with the Treasurer of State for safekeeping is perfectly proper and wholly within the provisions of the law.

Attorney General

FIC:gh
cc: State Auditor
State Treasurer