

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

To:
William D. Hayes

May 25, 1943
Auditor

From:
Frank I. Cowan

Attorney General

Duties of a Municipality as Trustee

I have been looking into this subject somewhat over the week-end and have failed to find anything to indicate that a municipality is bound by any more harsh rules when it acts as trustee than is an individual. Formerly, a trustee was the owner of the property and there was no criminal responsibility if he misapplied the trust funds. They were given to him, and the donor trusted him to make use of them as said donor desired; but the title and the legal rights were all in the trustee. Equity early came to the aid of the beneficiary of a trust, and assumed the duty of requiring that the trustee carry out the wishes of the donor. Eventually, statutes were passed in many jurisdictions putting a penalty on the trustee, if he used the funds for his private benefit. I do not find any authority for saying that any trustee is an insurer of the trust funds. His obligation is to give them such careful attention as a reasonably prudent man would give to his own property. If, without negligence on his part, the trust property is lost, it is not his duty to restore it, unless there is an express provision in the trust or he has expressly obligated himself in some way, to be responsible for the maintenance of the body of the trust.

For your benefit I quote briefly from Bogert, "Trusts and Trustees."

Vol. 3, Section 582. "The trustee has a duty to protect the trust property against injury or destruction. He is obligated to the cestui to do all acts necessary for the preservation of the trust res which would be performed by a reasonably prudent man employing his own like property for ends similar to those of the trust."

Section 612. "Where left to his own discretion and not controlled by the settler, the court, or a statutory list, the trustee is required by equity to exercise the skill and prudence of a reasonably prudent man in making, keeping and converting trust investments."

Section 612. "Exclusion of selfish Interest."

"The principle that the trustee should exclude all selfish interest in his administration of the trust, and maintain undivided loyalty to the cestui, applies to investments as well as other trust transactions. Lending trust funds to himself obviously violates this rule, as does the purchase of securities from himself."

I have found nothing expressly bearing on the duty of a municipality as trustee, but it is my opinion that those duties would be exactly the same as the duties of a single individual. I see no reason why there should be a greater duty, if a group of individuals are made co-trustees than there should be if there is a single trustee, and a municipality is, after all, simply a group of individuals given certain powers of self-government for the purpose of greater convenience in taking care of matters that affect the whole group.

FRANK I. COWAN

Attorney General