STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

Under Section 219, Chapter 19, R. S. 1930, the non-contributory pension Act, requirements for eligibility appear to be that in schools other than public schools, in order for a teacher to be eligible, the school must be supported fully or at least three-fifths by State or town appropriations and must be under public management and control. In this section, "state or town appropriation" should be construed as meaning "state and/or town appropriation." Under this section, "public management and control" means a joint board as required under Section 92 of said Chapter 19. In the opinion of this department, both requirements are essential for teachers to be eligible.

Under Section 229 of said Chapter 19, subsection I, the requirements for membership in the contributory system for a teacher in a school other than a public school are that such school has contract relations with a town under Section 92 and receives at least three-fifths of its support from the State and/or town, thus interpreting "state" as meaning public funds.

Under said Section 92, if the money paid under the contract equals or exceeds the income of the academy for the preceding year, exclusive of sums paid said academy by the contracting town, it is required that there be a joint committee; but if the amount paid under the contract amounts to less than half of the income of the academy for the preceding year, exclusive of the amount paid under the contract, then it is not necessary for a joint committee to be in existence in order for a teacher in such academy to be eligible for membership in the contributory system.

The word "support", as used in Section 229 (I) should be interpreted as the amount expended for running the scholastic part of the school, exclusive of costs of running dormitories, costs of feeding pupils, and similar non-scholastic costs.

FRANK A. FARRINGTON
Deputy Attorney General

June 24, 1943

To:
J. A. Mossman, Commissioner — Finance

From:
Frank I. Cowan — Attorney General

I have your memorandum of June 22nd, asking whether proceeds of the State Highway Bond Issue, issued under the provisions of P. & S. 1941, Chapter 68, may, by reason of inability to use the money for the original purpose, be invested in U. S. Government securities under the provisions of P. L. 1943, Chapter 192.

Although the amendment to R. S. 1930, Chapter 2, Section 75, which appears as P. L. 1943, Chapter 192, uses the word "investment" in connection with the purchase of "bonds, notes, certificates of indebtedness or other obligations of the United States of America which mature not more than one year from the date of investment," it is evident that the legislature had in mind the same type of limited in-

vestment we make when we deposit funds in a savings account or in any other interest-bearing account. For instance, the court of North Dakota in the case of *Kilby vs. Burnham*, 65 N. D. 169, held that placing a minor's money in a bank on a time certificate of deposit constituted an "investment" by the guardian.

On the other hand, a deposit of funds in a bank subject to withdrawal on demand does not constitute an "investment". See *Gross vs. Butler*, 48 Georgia Appeals 750; *Jones vs. O'Brien*, a South Dakota case reported in 235 Northwestern 654.

In line with the *Kilby vs. Burnham* case cited above, see *State vs. Marron*, 18 New Mex. 426; *Andrew vs. Iowa Savings Bank*, 241 Northwestern 412. There are many cases showing this distinction.

It is a recognized fact that for some years the State has had on daily deposit an amount of cash much in excess of the maximum provided in R. S. 1930, Chapter 2, Section 75, and it has been necessary to take advantage of the provision of the statute in regard to excess current funds. The purpose of the amendment of 1943 is two-fold. First, it will permit the State to get some return on moneys otherwise lying idle in non-interest-bearing bank deposits, and, second, it will relieve the treasurer from his position of having to consider several million dollars as current funds.

Although P. & S. 1941, Chapter 68, Section 2, provides that the $700,000 referred to in your memorandum shall be "for the purpose of raising funds to match regular federal aid funds for the construction of state highways and bridges," and although Section 5 of said act states, "The proceeds of such sales shall be held by the treasurer of state and paid by him on warrants drawn by the governor and council and shall be expended for the purposes set forth in section two hereof," the statute did not contemplate that the treasurer should hold the funds in actual cash for the stated purpose. It is naturally assumed that he would place the funds in a bank or banks, and it is further assumed that he would take his duties as steward of said funds seriously and, where possible within the provisions of his legal rights, would obtain for the State whatever interest he could to offset as far as possible the interest which the State itself is paying for the use of the money. The 1943 amendment enlarges his authority by providing an additional location for the placing of the funds under such circumstances that they will be safe and can be recovered at such time as the Highway Commission believes it can use them.

No such "investment" should be made with these particular funds without instructions from the Highway Commission that the money will not be needed immediately for the purpose expressed in the enabling act, and the "investment" should be so made that withdrawal can be accomplished any time the Highway Commission shall need the money.

FRANK I. COWAN
Attorney General