

MAINE STATE LEGISLATURE

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April 25, 1946

To Fred M. Berry, State Auditor

I received your memo of April 24th, relating to your report covering your audit on the Town of Livermore Falls, under date of August 9, 1945, in which you took exceptions to the manner in which their ministerial and school fund was invested.

You further state that the chairman of the board of selectmen of Livermore Falls sent a letter to your department under date of April 20, 1946, stating that the trust funds were invested in accordance with the provisions of Chapter 223, P&SL, 1845; and you ask whether or not Chapter 80, Section 106, R. S. 1944, supersedes Chapter 223, P&SL 1845.

In view of the fact that I have talked this over with you since your memo and you call my attention to the provisions of Chapter 222, P&SL, 1845, which has to do with the investment of the school funds in Livermore, while 223 has to do with the investment of ministerial funds in said town, I will say that notwithstanding the provisions of Chapters 222 and 223, P&SL 1845, it is my opinion that ministerial and school trust funds in the hands of the trustees under the provisions of those two chapters of 1845 should be invested in the manner provided in Section 106 of Chapter 80, R. S. 1944. You will find this provision in Section 54 of Chapter 53 which provides for the administration of ministerial and school lands and funds arising therefrom.

Chapters 222 and 223, P&SL 1845 created a body corporate with certain named incorporators, for the purpose of holding as trustees the ministerial and school funds of East Livermore. Therefore the corporation is a quasi-municipal body created by the legislature of 1845 for the purpose of holding and investing said trust funds according to the laws of Maine.

Section 106 of Chapter 80, R. S. 1944, is a general statute, amended in 1931 and 1941, and applies to all trust funds, whether held by quasi municipal corporations or by the municipal officers of a town acting as trustees under the provisions of the Revised Statutes. Said Section 106, Chapter 80, limited the investments of sinking funds and permanent school funds, providing that this act should not be construed to require any change of investments made prior to July 7, 1923. I understand that the mortgage notes in question are dated in 1935, subsequent to the time that the provisions of Section 106, Chapter 80, R. S. 1944, became effective.

Notwithstanding the fact that the legislature of 1845 created corporations for the purpose of holding municipal and school funds, the investment of said funds is regulated by public laws, as the funds are of a public nature. Therefore Section 106 of Chapter 80, R. S. 1944, prevails over any provisions of Chapters 222 or 223, P&SL 1845, relating to investment of said trust funds.

Ralph W. Farris
Attorney General

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