

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1945-1946

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As you state in your letter, Section 127-F has to do with the appropriation provided for in the act creating the Seed Potato Board, which defines its powers and duties. This was passed by the legislature of 1945 as an emergency measure and became effective April 5, 1945, when signed by the Governor. The legislature in this act appropriated from the unappropriated surplus of the General Fund the sum of \$100,000, to be made available to the Seed Potato Board, said appropriation to constitute an annual revolving fund for the use of the Board in carrying out the purposes of the act. There is, however, a proviso at the end of this appropriation section which reads:

“Provided, however, that from funds arising from the sale of seed potatoes under this program said seed potato board shall cause to be paid into the state treasury annually a sum which shall, in 10 years, equal the amount of said \$100,000 appropriation; and in any year when said board cannot, from the sale of said seed potatoes, pay said amount in full, then the state treasury shall be reimbursed as to the balance of said amount by money taken from, but not larger than 10% of, the total tax collected under the provisions of sections 206 to 217, inclusive, of chapter 14, commonly known as the potato tax.”

You state in your letter that the Seed Potato Board will have no income arising from the sale of seed potatoes until the fiscal year ending June 30, 1947, and you therefore feel that the sums of money to be paid back under the provisions of Section 127-F would not have to be paid back until the fiscal year beginning July 1, 1946.

In view of this fact, it is my opinion that that would be a reasonable interpretation of the statute; that the legislature did not intend that the Seed Potato Board should pay into the State Treasury \$10,000 until the year when the said Board would receive this amount or more from the sale of said seed potatoes. I feel that it would be reasonable to take the fiscal year beginning July 1, 1946, as the basis of making these payments to the State Treasurer.

RALPH W. FARRIS
Attorney General

May 13, 1946

To Fred W. Hollingdale, Commissioner of the Treasury

I have your memo of May 8th, relating to Section 11 of Chapter 15, R. S. 1944, as amended by Chapter 22, P. L. 1945, in which you state that the question arises as to the authority of the Commissioner of the Treasury with respect to State funds deposited under the exception established in said section 11 of said chapter, which reads as follows:

“The above restriction shall not apply to deposits subject to immediate withdrawal available to meet the payment of any bonded debts or interest or to pay current bills or expenses of the state.”

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This exception is to the law which permits the treasurer to deposit moneys including trust funds of the State in any of the banking institutions or trust companies or mutual savings banks organized under the laws of Maine, or any national bank located in this State; or when there is money in the treasury which in his judgment is not needed to meet current obligations, he may with the advice and consent of the Governor and Council invest such amount as he deems advisable in bonds, notes, certificates, etc., provided, however, that no sum exceeding an amount equal to 25% of the capital, surplus and undivided profits of any trust company or national bank, or a sum exceeding an amount equal to 25% of the reserve fund and undivided profit account of a mutual savings bank shall be on deposit therein at any one time.

After considering this statute, you state in your memo that the custom of the treasurer's office for the past several years has been to maintain funds under this exception above cited in accounts in Augusta banks, and this has resulted in large local deposits and has caused criticism from banks in other localities; and you feel that the situation should be corrected, if the Commissioner has authority under this statute to maintain these demand deposits in other banks, and you ask the following questions:

"1. Is the general purpose of the law to diversify the depositories to the end that large deposits will not be centered in any one financial institution?"

My answer to No. 1 is in the affirmative.

"2. As to demand deposit within the above exception, is the choice of a depository an administrative matter left to the discretion of the Commissioner?"

My answer to No. 2 is in the affirmative. You will note by the wording of the statute that the word "may" is used, and it is a permissive statute and is an administrative matter.

"3. Would it be within the spirit and intent of the law for the Commissioner of the Treasury to maintain such demand accounts in the larger commercial banks in cities other than Augusta where the funds would be available for immediate withdrawal for the purposes mentioned in the statute and from which the Commissioner could transfer periodically balances to an active account or accounts in Augusta?"

My answer to the third question is in the affirmative, for the reason that your question comes within the purview of the exception to the restriction, which does not apply to deposits subject to immediate withdrawal, available to meet the payments of any bonded debts or interest or to pay any current bills or expenses of the State.

The amendment which you mentioned in your memorandum, Chapter 22, P. L. 1945, does not affect the question which you submit. This amendment has to do only with the deposit for safe keeping of obligations of the United States in banks of this or any other State, with the approval of the Governor and Council.

RALPH W. FARRIS
Attorney General

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