

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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3 of Chapter 11, R. S. 1944, so as to relate to the Executive Council. It is my opinion that the Council should receive \$20 for each session of the Council during the special session of the legislature.

In the last paragraph of your memo, you state that you are not certain what should be considered as a session of the Executive Council. It is my opinion that each daily meeting of the Executive Council constitutes a session, whether during a special session of the legislature or at any other time.

RALPH W. FARRIS
Attorney General

June 24, 1946

To R. C. Mudge, Finance Commissioner, and
H. H. Harris, Acting Controller
Re: Permanent Funds Held in Trust by the State of Maine

Referring to your memo of May 22, 1946, to which you attached a copy of your proposed reply to the Controller's request for certain answers in connection with the treatment of permanent funds held in trust by the State, and supplementing conference in my office with you and Mr. Robinson on this matter, I am submitting a joint memo of my opinion to you and Mr. Harris.

1) Under Section 14, Chapter 15, as amended, is it compulsory that all of these miscellaneous trusts be lumped for investment?

My answer is in the negative, as I construe the amendment, which is Chapter 87, P. L. 1945, to be permissive and not mandatory.

2) If all of these are lumped, is it mandatory that the interest be prorated?

My answer to the second question is in the affirmative, because if you lump these investments, you come within the provisions of the amendment, and they should be prorated according to the principal amounts of the several trusts involved. This answer is based upon the assumption that all the trust funds are lumped.

3) If you do prorate the interest, should it be prorated on the principal of the trusts less any impounded accounts?

My answer to the third question is in the negative, as the amendment provides that the earnings of the investments shall be prorated, according to the principal amounts of the several trusts; and the amendment further provides that the identity of each separate trust fund shall be maintained. I am of the opinion that you should not take inactive impounded trust funds and rob the interest-bearing trust funds of their income and add it to the inactive, worthless accounts; but that these impounded accounts should be marked off, upon authorization by the legislature.

4) If some of the trusts are lumped and others are separate, should the income received be prorated only on the participating trusts, and the separate trusts receive only the amount which they individually earned?

My answer to this question is in the negative, because in my opinion, if you are going to operate under the provisions of the amendment in Chapter 87, P. L. 1945, you should lump all the trusts and not part of them. It is my opinion that you should not lump any further trust funds until we ascertain what the legislature wants to do in regard to the reserve funds which we have set up already from the profits of sales of securities in trust funds, and also until we see what they want to do about marking off worthless accounts such as those that have been impounded. Before we begin to operate under the provisions of Chapter 87, P. L. 1945, to quote the suggestion of Mr. Mudge, that it is poor business in his opinion to lump only part of the funds, I wish to add that it is my opinion that the statute contemplates lumping all the trust funds for investment or none.

5) A number of sales have been made and a profit was derived from the sale. Is it permissible to set up the profit in a reserve account to be used to offset losses in the impounded trusts?

In answer to question 5, I will say that it is my opinion that the reserve fund set up from the profit on the sale of trust funds should not be used to offset losses on impounded trusts, but that you should await the action of the next regular session of the legislature. As members of the committee on the investment of trust funds, Mr. Mossman, Mr. Robinson and I voted to set up the profit derived from the sale of certain trust securities for the purpose of waiting to see what the legislature wanted to do about marking off worthless trust fund accounts.

6) If we are to allocate the profits on the sale of securities, should it be added to the principal of the trusts or considered as income?

It is the opinion of this office that the profits on sales of securities from the trust funds should be treated as current income. Of course, when we have had legislative action and can start new in handling these trust funds for investment, that income will be prorated to all the trust funds according to the principal amounts of the several trusts.

It is my opinion, which was agreed to by Mr. Robinson and Mr. Mudge, that we should not lump trust investments until we have word from the legislature at its regular session as to what it desires in the way of handling these separate trust funds, and also what their idea would be as to the reserves which we have set up. It is possible that the legislature will not agree that the profits from the sale of securities in these trust funds should be prorated according to the principal amounts of the several trust funds in the pool. At the time of Mr. Mossman's retirement from the office of Finance Commissioner, he had something in mind along this line to present to the next regular session of the legislature.

RALPH W. FARRIS
Attorney General