

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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July 3, 1946

To Lucius D. Barrows, Chief Engineer, State Highway Commission

I have your communication of June 27th, stating that the Commission has requested you to ask me if there is any law which authorizes the State Highway Commission to construct cattle passes as part of the construction of state and state aid roads.

The provisions of Chapter 20, R. S. 1944, empower the Commission under its general powers and duties to make rules and regulations in regard to construction and maintenance of all state and state aid highways and to direct the expenditure of all moneys for construction and maintenance of all state and state aid highways, which powers and duties in my opinion are broad enough for the Commission to construct cattle passes as a part of the construction of state and state aid roads. Furthermore, I believe it is the duty of the Commission to do this work as a safety measure, and such construction would be approved by the Public Roads Administration as items of costs in federal aid projects. It is a matter for the judgment of the Commission, to be exercised in each particular case. For instance, where a right of way divides land which is being taken under condemnation proceedings or otherwise, it would reduce the amount of damages for the State Highway Commission to construct a cattle pass under the highway so that cattle could pass to and fro from the pasture.

RALPH W. FARRIS
Attorney General

July 3, 1946

To David H. Stevens, State Assessor
Re: Taxation of Savings Banks

I received your memo of July 1st relating to the tax base under the provisions of Sections 142 and 143 of Chapter 14, R. S. 1944, which provide that savings banks deposits, reserve funds, etc., are part of the base of the tax. You state that for the purpose of taxation your department has considered deposits as any moneys held by the bank which could be invested by the bank to create revenue, as distinguished from securities deposited in the bank for safe keeping, which have been considered as trust funds and not subject, to the intent of the law, in taxing deposits. You ask for a ruling as to whether moneys held by some savings banks in connection with FHA loans should be considered as deposits and subject to taxation. You further state that these FHA loans are mortgage loans, and there is no federal money involved. If, however, the loans are made under a prescribed procedure, the federal government guarantees the bank from any loss connected with the same. You further state that no interest is paid on these balances. The bank is, however, in a position to invest a good part of the total of these balances, the same as any other deposits. You further state that these funds are a good deal like Christmas Club and Vacation Club deposits, which are reduced practically to zero once a year and that the Christmas Club and Vacation Club deposits have always been considered subject to the tax.

It is my opinion that these funds, which are held to take care of FHA loans, are not in the strict legal sense deposits, as our courts have held in many instances that the "deposit of money in a savings bank creates a relation of debtor and creditor between the depositor and the bank, and there is no such relation in the FHA loans, which are held practically in trust to be drawn upon by the borrower as he progresses in building his house or improving his property, according to the conditions of the loan. Borrowers are not allowed to draw any funds from the balances of these accounts. The borrower gives a mortgage, and the bank furnishes the money needed to purchase the property. The borrower makes a monthly payment which has been figured out in advance and over a term of years will be sufficient to apply a certain amount to the loan, pay the interest, insurance and the taxes. This fact does not make the proceeds held in trust for FHA loans deposits under the provisions of Section 142, Chapter 14, R. S. 1944.

I note that you mention in your memo that the Banking Department recommends that the banks hold these FHA loans segregated from the regular mortgage loans; and the payments on these FHA loans are considered to be in escrow, which in my opinion is the proper procedure, because these payments made by the borrowers are really trust funds to be drawn upon as aforesaid. For that reason I do not believe that the proceeds of these FHA loans should be considered as deposits for the purpose of taxation. The deposits in a bank are not loans to the bank, and consequently cannot be investments, the term "deposit" having a well accepted meaning in the banking business, and the money deposited is payable upon demand, there being no difference between a deposit in a checking account and one in a savings account. The controlling consideration in determining whether a fund deposited in a bank is a "deposit" or an "investment" is whether a depositor has an absolute right to withdraw the fund on demand, and not whether the fund is not to draw interest or could be invested by the bank to create revenue.

You can readily see that the funds held to be drawn upon by borrowers as they progress in carrying out their terms of the loan are dissimilar to the Christmas Club and Vacation Club deposits, for the reason that there is a relation of debtor and creditor between the depositor and the bank in the latter case and these should rightly be treated as deposits by your department, as a part of the base of the tax on the total of the deposits in any bank.

In using the word "deposits" in Section 142, I do not believe that it was the intent of the legislature that deposits should be considered as any moneys held by the bank, which could be invested by the bank to create revenue, because a bank deposit is different from an ordinary debt or money held in escrow for a particular purpose in this: that, from its very nature, the deposit is constantly subject to the check of the depositor, and is always payable on demand, which is not the case in FHA funds held by savings banks in Maine.

RALPH W. FARRIS
Attorney General