# STATE OF MAINE

# REPORT

OF THE

# ATTORNEY GENERAL

for the calendar years

## 1945-1946

matter for approval to the Governor and Council, in view of Section 15 of Chapter 12, which provides that the Governor with the advice and consent of the Council is authorized to accept in the name of the State any and all gifts, grants or conveyances to the State of Maine.

The gift under consideration being to the State of Maine, of course, I think it would be proper to have the approval of the Governor and Council in accordance with this provision.

ABRAHAM BREITBARD
Deputy Attorney General

October 28, 1946

To Hon. Horace Hildreth, Governor of Maine

In regard to the situation relating to the disability of one of your Executive Council, there is nothing that can be done about same.

The Constitution provides that the Council shall be chosen biennially the first Wednesday of January, by joint ballot of the Senators and Representatives in convention; and vacancies which shall afterward happen shall be filled by the Governor with the advice and consent of the Council within thirty days from said vacancy, and he must be from the same district in which the vacancy occurs, and the oath of office shall be administered by the Governor, and the new Councillor shall hold office until the next convening of the legislature.

Inasmuch as there is no vacancy on the Council and there is no provision in the Constitution providing for the taking care of the disability of a Councillor, there is nothing that you can do except await the convening of the next legislature for a new Council.

In case Mr..... should resign, you could exercise your constitutional authority and appoint a Councillor from his district to serve until the next legislature convenes.

RALPH W. FARRIS
Attorney General

October 28, 1946

To David H. Stevens, State Assessor

I have your memo of October 22nd relating to the interpretation of the second sentence of Section 143 of Chapter 14, R. S. 1944, as amended, which reads as follows: "from the average amount of deposits, reserve fund, and undivided profits so returned by each bank there shall in each case be deducted an amount equal to the value so determined of United States obligations, all bonds, notes, and other obligations issued after the 1st day of February, 1909, . . ." etc. You state in said memo that some banks have made FHA loans. It is the practice of the banks to have the borrower give a mortgage and pay a certain fixed amount each month to the bank. These payments are credited to the borrower's escrow account, which account is charged: once a month, the amount to be applied to the loan and the month's interest on the unpaid balance; once a year for the taxes, and once every two or three years for the insurance.

You state that it is the contention of some banks that the total of these escrow accounts and credit balances should not be included as part of the tax base,—in other words, as part of the banks' deposits. This contention is agreed to, as these credit balances are not deposits but moneys held in trust.

You further state that on the six months' return each bank gives a list of its investments, the amount of its cash on hand, the amount of money on deposit within the State, and the amount of money on deposit out of the State.

You also state in your memo that the moneys which make up the total of the credit balances of the escrow accounts is included in the grand total of the above assets, either as cash on hand, cash on deposit, or as part of the investments.

You further state that it is the contention of one bank that the deduction should not be made from the cash on hand or from the cash on deposit within the State, even though under the provisions of Section 143 of Chapter 14, R. S. 1944, the amount of the tax is reduced.

You ask the following question: "Granted that the escrow credit balances should not be included in the taxable base (deposits, reserve funds and undivided profits), should the bank expect to include the total of these escrow balances among the exemptions?"

*Answer.* It is my opinion that the bank should not expect to include the total of these balances among the exemptions, unless they were included in the taxable base. In other words, they should not deduct items from the tax base which were not included in it at the outset.

I do not want to pass upon the law as to the right of the bank to invest these escrow funds which they have on hand as a result of making FHA loans, as that is a matter which, I presume, is regulated by the FHA Act.

RALPH W. FARRIS
Attorney General

October 28, 1946

To David H. Stevens, State Assessor

I have your memo of October 22nd relating to Section 143 of Chapter 14, R. S. 1944, as amended by Section 22 of Chapter 42, P. L. 1945, which provides that investments in such notes and bonds secured by mortgages on real estate in this State as are exempt from taxation in the hands of individuals, and the assessed value of real estate owned by the bank, and also an amount equal to 3/5 of the value so determined of such other assets, loans, and investments as by such statement appear to be loans to persons resident or corporations located and doing business in this state, securities of this state, public or private, bonds issued by corporations located and doing business in this state and guaranteed by such cor-