

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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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 $\frac{3}{5}$ 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-

porations, provided, the corporations issuing such bonds be operated by and physically connected with such guaranteeing corporations, and also an amount equal to $\frac{3}{5}$ of the cash on hand and cash deposited within the state. . .

You further state that in checking the franchise tax returns of savings banks it has been found that bonds of certain corporations are guaranteed by a mortgage not only upon real estate, but also upon certain personal items, and you propound the following question: If a bond is guaranteed by a mortgage on real estate, which mortgage includes the personal property, is it to be considered as being in the group for which the bank can claim 100% exemption or $\frac{3}{5}$ exemption?

Answer. In my opinion, after a careful reading of Section 143 of the statute above quoted, where a bond is secured by a mortgage partly on real estate and partly on personal property, the bank would be entitled to only $\frac{3}{5}$ exemption on such bond or security.

I feel that the answer to the first question takes care of your second question, because the statute does not provide for any percentage in the $\frac{3}{5}$ exemption class, separating the statute as follows: "Investments in such notes and bonds secured by mortgages on real estate in this state are exempt from taxation, . ." That means 100% exemption and I quote the statute farther as follows, ". . . and also an amount equal to $\frac{3}{5}$ 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. . ." It seems to me it is quite apparent upon reading this language, that if the bond owned by the bank is not secured by mortgage on real estate in toto, it comes within the $\frac{3}{5}$ exemption instead of the 100% exemption.

RALPH W. FARRIS
Attorney General

October 30, 1946

To Harry V. Gilson, Commissioner of Education

I received your memo of October 25th yesterday, inquiring in regard to the provisions of Section 96 of Chapter 37, R. S. 1944, as amended by Chapter 216, P. L. 1945, relating to the trustees of Thornton Academy and the superintending school committee of the City of Saco forming a joint committee for administering certain phases of the academy's educational program.

You call my attention to an act, which is Chapter 500, P. & S. L. 1885, which authorized the City of Saco and the trustees of the Academy to contract for the tuition of scholars, and you inquire whether or not this special law takes the place of the provisions of Section 96, Chapter 37, R. S., so that the conditions of that section do not hold in this particular case.