MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1945-1946

porations, provided, the corporations issuing such bonds be operated by and physically connected with such guaranteeing corporations, and also an amount equal to 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 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 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 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 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 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.

In reply to your question: When the Private and Special Act of 1885 was enacted, it referred to Sections 28 to 33 of Chapter 11 of the Revised Statutes of 1883, which related to free high schools of the day. The statute has been revised many times since the 1883 Revision, and the provisions of Sections 28-33 inclusive of Chapter 11 have been materially amended by various later acts; and the provisions of Section 96 of Chapter 37, as amended by the Public Laws of 1945, refer specifically to statutes contemplated by Section 89 of Chapter 37, R. S., which classifies free high schools, academies, and seminaries.

It is my opinion that the provisions of Section 96 of said Chapter 37 and the provisions of Section 89 of Chapter 37, relating to this subject, and the amendment in Chapter 216, P. L. 1945, impliedly repealed Chapter 500, P. &. S. L. 1885, and that a joint committee can be formed, and when the amount to be paid under the contract shall equal or exceed the income of the Academy for the preceding year, exclusive of sums paid such academy by the contracting town, it is mandatory that a joint committee be formed. The action of the legislature in Chapter 321, P. L. 1945, would further indicate that it was the intention of the legislature that the provisions of any special act would be superseded by the public laws which are brought up to date in the new Revision and the amendments of 1945.

RALPH W. FARRIS
Attorney General

October 30, 1946

To Guy R. Whitten, Deputy Insurance Commissioner

Referring to your memo of October 21st and considering proposed legislation in the coming legislature, you say that the Insurance Commissioner is giving attention to certain phases of the tax law and you call my attention to the action of the 1945 legislature in taking all discriminatory tax laws from our statutes, thereby putting our house in order according to a late decision of the U. S. Supreme Court, so that there would be no protest payments of taxes and no costly litigation. You enclosed a copy of an opinion from the U. S. Supreme Court involving the case of the *Prudential Insurance Company vs. Benjamin*, as Insurance Commissioner of the State of South Carolina. I have already received this decision in my Advance Sheets of the U. S. Supreme Court Reporter, and I am not in a position to say that it decides anything definitely upon the subject to which you refer.

For this reason it is my opinion that the Insurance Department of this State should not change its laws every time the U. S. Supreme Court hands down a decision on insurance matters.

You state that you would include in your proposed legislation at the coming legislature an amendment which would put our tax laws back on the same basis as they were at the time of the last legislative enactment. In other words, you propose a tax of 2% on the gross direct premiums of foreign companies and 1% on the domestic companies.