STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

"There are some things which came out in the testimony I feel require a heart to heart talk with him. While this evidence was not sufficient to warrant his removal, it certainly requires a discussion."

ALEXANDER A. LaFLEUR
Attorney General

January 29, 1952

To General Spaulding Bisbee, Director, Civil Defense and Public Safety
Re: Assessments by Counties against Municipalities

We have your memo of January 23, 1952, in which you ask the opinion of this office as to whether or not a county may assess municipalities for moneys to be used for Civil Defense purposes under the Civil Defense Act of 1949.

Please be advised that under the 1951 amendment to the 1949 Civil Defense Act (Chapter 273 of the Public Laws of 1951), counties have been included within the definition of political subdivision, and it is our opinion that counties may appropriate money for Civil Defense measures, if the same is properly accounted for in their budgets.

We are of the opinion that in the interim period during which the Act is in effect and before counties make provisions for appropriations in their budgets, they may not assess municipalities for funds to be used for Civil Defense purposes.

JAMES G. FROST
Assistant Attorney General

January 29, 1952

To Guy R. Whitten, Deputy Insurance Commissioner
Re: Direct Deductible Fire Insurance Coverage

You have requested this office to advise you:

1) If direct deductible fire insurance coverage may be legally written under the provisions of the Maine standard statutory fire insurance policy: and

2) If the authority extended to the Insurance Commissioner under subsection III of Section 96 is sufficiently broad to modify that insuring clause of the Maine standard policy to provide the writing of direct deductible fire insurance coverage by appending to the policy such a slip or rider as provided in the section above cited.

The Maine standard statutory fire insurance policy provides that the purchaser of the policy insures his property ". . . to the extent of the actual cash value of the property at the time of loss . . . against all DIRECT LOSS BY FIRE, LIGHTNING, ETC."

On its face, then, this standard policy purports to be a contract of indemnity indemnifying the insurer for all direct loss sustained by reason of injury caused by those perils against which he insures.

As opposed to such a contract, a direct deductible policy would provide that the purchaser of such a policy would in effect become a self-insurer, taking the risk for a certain percentage of the possible loss. The purchaser would bear the first loss up to a stipulated amount or percentage of value, and the insurer would bear the balance up to the amount of the policy limit.

In the one contract the insured would receive a sum of money equivalent to the extent of the actual cash value of the property at the time of loss. Under the direct deductible policy the insured may recover nothing under his policy, if the damage is less than the deducted amount.

We do not here consider the advantages or disadvantages of the direct deductible insurance policy. Suffice it to say that the direct deductible insurance policy appears to be such a complete deviation from the provisions of the Maine standard statutory fire insurance policy that it is our opinion that it should not be permitted as a modification of the Maine standard policy. This office feels that such a change must be effected through legislative action.

JAMES G. FROST
Assistant Attorney General

January 30, 1952

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Local Participating District – Millinocket

We have your memo of January 22, 1952, relative to the Town of Millinocket. You stated that this town is concerned with almost the identical fact situation which concerned the City of Rockland upon which we submitted a memo to you under date of December 28, 1951.

You recite that the Town of Millinocket in 1943 voted to permit its employees to participate in the State Retirement System, as provided by Section 227 of Chapter 328 of the Public Laws of 1941, and that they did, further, on January 2, 1952, act favorably on an article to authorize the selectmen to sign an agreement with respect to Social Security coverage which would permit those municipal employees not previously included as members of the State plan to participate under Social Security benefits. The question is, then, the same as was presented to this office with respect to Rockland and is whether a local participating district has any right, under the law, to amend its original action with respect to taking the benefits of the Maine State Retirement System, thereby excluding certain employees who had hitherto been eligible, by virtue of the city's original action under the Maine Retirement System plan.

In answering your question we affirm our opinion of December 28, 1951, and state that it is our opinion that once having elected to participate in the State Retirement System a city may not by subsequent amendment of its laws eliminate from participating in the State System employees who had hitherto been covered by that System.

JAMES G. FROST
Assistant Attorney General