

MAINE STATE LEGISLATURE

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May 16, 1952

To Frank S. Carpenter, Treasurer of State
Re: Deposits of State Funds

You have asked this office for a memo to supplement our opinion of April 25, 1952, to clarify our position on the 25% limitation contained in section 11 of Chapter 15 of the Revised Statutes of 1944.

This law provides that the Treasurer shall not deposit moneys in any trust company or national bank. . . in a sum exceeding an amount equal to 25% of the reserve fund and undivided profit account of a mutual savings bank. It is further provided that this 25% restriction shall not apply to deposits subject to immediate withdrawal available to meet the payment of any bonded debts or interest, to pay current bills or expenses of the State.

The purpose of this 25% limitation is to diversify the depositories, to the end that large deposits shall not be centered in any one financial institution and that protection shall thereby be provided for the moneys of the State. The exception to this limitation permits the Treasurer to deposit moneys in excess of this 25% figure if that ~~money~~ deposit is subject to immediate withdrawal available to meet the payment of any bonded debts or interest, to pay current bills or expenses of the State.

It is the opinion of this office that funds in excess of the 25% restriction left in any one banking institution for a long period of time, even though subject to immediate withdrawal, do not come within the exception, but rather come within the 25% restriction. To come within the exception to the limitation, funds in excess of 25% must have been deposited for a particular purpose, i.e., to meet the payment of a bonded debt, or interest, or to pay current bills and expenses of the State.

In Mr. Farris's opinion of June 29, 1950, it is stated that the word "immediate" has been held to mean "within such convenient time as is required for doing the thing," so that some of the deposits of . . . funds in . . . banks might be subject to immediate withdrawal because a bond issue was coming due immediately, and other deposits might not be subject to immediate withdrawal because of no occasion to withdraw the same.

In effect the exception to the 25% limitation might be classed as an emergency provision. In an opinion of the Attorney General dated September 19, 1941, relative to a deposit of funds of the State Highway Department in excess of 25%, which was in excess of the 25% because the department did not have occasion to draw against such funds as rapidly as they normally did, it was there said, after quoting the exception to the limitation, "It seems to me that the sentence which I have quoted above was provided to protect you in case of any emergency such as this."

It is, of course, an administrative problem of your department to determine from time to time which of the funds are subject to immediate withdrawal for payments, for the reasons stated in the statute; but in conclusion we wish to state that this exception is to be used in special instances where in one emergency or another it is necessary that those funds be present for a temporary period to pay such bills as are indicated in the statute and that the intent of the statute is violated if sums greatly in excess of the 25% limitation are left lying in banking houses for an unreasonable length of time.

James G. Frest
Deputy Attorney General

jgf/c