

MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT
OF THE
ATTORNEY GENERAL

for the calendar years
1955 - 1956

a hospital approved by the American Hospital Association and the American Medical Association, and in no circumstances may this be waived.

ROGER A. PUTNAM
Assistant Attorney General

March 8, 1956

To Frank S. Carpenter, Treasurer of State

Re: Withholding of Funds

. . . You ask if it is proper for you to withhold town funds to pay Social Security, which, as you state, is a federal agency.

It is our opinion that under the provisions of Section 4, subsection IV of Chapter 65 of the Revised Statutes it is proper for you to withhold money from a town which owes money to the Maine State Retirement System by virtue of an agreement executed by the town and the System, whereby the town agreed to pay periodically moneys due for Social Security.

JAMES GLYNN FROST
Deputy Attorney General

March 14, 1956

To Frank S. Carpenter, Treasurer of State

Re: \$10,000 State of Maine Highway 4% Bonds numbered 30013-22, due May, 1941, and Vesting Order 14772, Alien Property Custodian.

Reference is made to an opinion of Attorney General Ralph W. Farris, dated July 26, 1950, at which time the Attorney General advised that the sum due on the above mentioned bonds plus interest accrued and unpaid not be turned over to the Office of the Alien Property Custodian. The basis of his opinion was that there would not be sufficient protection to the State of Maine if the bonds were presented for payment at your office.

Since Mr. Farris's opinion there has been a great deal of litigation in regard to the right of the Attorney General of the United States as successor to the Alien Property Custodian to vest in himself title to an obligation, in this case a bond, which was not present within the borders of the United States. In *Cities Service Co. v. McGrath*, 342 U. S. 330, the Supreme Court of the United States had an opportunity to pass on practically the very situation that faces us here. In that case the Attorney General sought payment of two 5% gold debentures, face value of \$1000 each, payable to bearer. These obligations were outside the country at the time the vesting order was made. The Supreme Court held that under the provisions of the Trading with the Enemy Act the Attorney General had the power to vest title of these obligations in the United States Government, notwithstanding the fact that the debentures themselves were outside the United States at the time of vesting and that he had never at any time come into the physical possession of the bonds, which were the evidence of indebtedness.

Such is the situation we are faced with. The vesting order discloses that the original title was in Allianz Lebensversicherungs, a German corporation, at the

date of the vesting order, an alien enemy of the United States. The vesting order is conclusive as to the title or right to possession in the vested property in the Attorney General for the United States. Questions of title to the property which is vested in him by virtue of the Trading with the Enemy Act, can be tried only in a suit brought under the provisions of that Act. See Section 9 (a) of the Act. The State is protected by Sections 7 (e) and 5 (b) (2) of the Trading with the Enemy Act, which provide that any payment or transfer made by virtue of any vesting order under the Act shall be a full acquittance and discharge for all purposes of the obligation and of the person making the same and no person shall be held liable in any court for or in respect of anything done or committed in good faith in connection with the administration of this Act.

In the *Cities Service* case above mentioned, the trustee was the Chase National Bank, who argued that there was a possibility that the debentures could be presented at one of their branch banks outside the United States and that there was a possibility that a foreign court could order them to pay in the foreign jurisdiction; therefore they would be subject to double liability, and this might well be a taking of their property in violation of the Fifth Amendment. The Court held that if this event happened, the bank would have a right to recoup from the United States for a taking of their property within the meaning of the Fifth Amendment, to the extent of their double liability.

In view of the *Cities Service* case and the protection given to the State by the provisions of the Trading with the Enemy Act, as construed, it is our opinion that there is now sufficient protection to the State of Maine on double liability to warrant the transfer of the face value of the bonds plus the accumulated interest on each to the Attorney General of the United States for account No. 28-18501.

ROGER A. PUTNAM
Assistant Attorney General

March 15, 1956

To Earle R. Hayes, Secretary, Maine State Retirement System

Re: Disability Retirement—Occupational Disability

We are returning herewith all materials submitted by you for our consideration *re* an application for retirement under the provisions of Section 7, subsection II, Occupational Disability.

You requested an opinion as to the definition of the word "injuries," as used in subsection II, paragraph A. The essence of the occupational disability law is that an employee may be retired if he has incurred disability as the result of injuries received in the line of duty.

"A. Upon the application of a member or of his department head, any member who has had 10 or more years of creditable service, or any member in service regardless of years of creditable service upon the determination by the Board that he has incurred disability as the result of injuries received in the line of duty, may be retired by the Board of Trustees on a disability retirement allowance upon filing such application; provided that the medical board, after a medical examination of such member, shall certify that the member is mentally or physically