

# MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1955 - 1956

It may be well, as your memorandum discloses, to submit new legislation to clarify this apparent conflict. This we leave to your best judgment.

ROGER A. PUTNAM  
Assistant Attorney General

May 25, 1956

To Guy R. Whitten, Deputy Insurance Commissioner

Re: Substitution of Deposit, Manchester Insurance Corporation

We have your inquiry of April 27th with correspondence attached, which is returned herewith.

Section 50 of Chapter 60, R. S. 1954, requires a foreign insurance company, as a condition precedent to doing business in this State, to maintain a deposit, either in this State or in its State of domicile, which in the present case is New Hampshire. The section further provides that the deposit may be in securities under the same restrictions as the investments of companies in other States.

Presently there is deposited with the Insurance Commissioner in New Hampshire \$100,000, par value, U. S. Government bonds, held under some sort of trust arrangement for the benefit of the policyholders in the company, primarily those in Maine. The corporation proposes to substitute therefor a certificate of deposit in the First National Bank of Boston in the amount of \$100,000.

While I am no banker, a certificate of deposit can be defined as a written acknowledgment by a bank of the receipt of a sum of money on deposit, which it promises to pay to the depositor or his order or some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created. This order, I understand, may be placed in trust with proper endorsements thereon, which would allow the Insurance Commissioner to negotiate the same if any proper claim were made against the deposit. A certificate of deposit, in my opinion, may be a form of security, but I do not believe it is the type of security that is referred to in this section. I think that the term "securities," as used here, has its usual or ordinary sense, meaning stocks, bonds, or other evidence of indebtedness of similar nature.

I think it should be pointed out that the government bonds are much better security in the particular instance than the certificate of deposit might be. The certificate is merely a claim against the bank, and if the bank should fail it would be insured only if the bank belonged to the F. D. I. C. The maximum amount is \$10,000 and there is a possibility that the other \$90,000 would be unsecured and the claimants would stand only as general creditors to the bank. I think that in view of the fact that the statute was put upon the books to protect the policyholders and to give them a source of recovery, we must be restrictive in the quality of security that we require. We should give the policyholders the ultimate in protection. It is therefore our opinion that the substitution should be denied.

ROGER A. PUTNAM  
Assistant Attorney General