STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

first year, $17,500 would be left, properly allocated to utility costs. If contracts were signed before June 30, 1959, amounts up to this extent of the appropriation would be committed and would not lapse.

It is true that even under this interpretation, the result seems silly. The statute could have said, "Not more than $25,000 shall be obligated during the period ending June 30, 1959 and the amounts obligated shall not lapse." Yet we must remember that the redraft was hastily made near the end of the session after the Supreme Court decision on the first draft.

You have also asked what procedure to follow in case the costs of moving the utilities exceeds the available amounts.

Under Section 13 of Chapter 340 of the Public Laws of 1957, it is a criminal offense to contract for any expenditure in excess of appropriations. Chapter 378 is definite in its limitation of total expenditure. It is true that the amount necessary was unknown, but it is also true that the amount appropriated was definite and that not only the general law, but the special act limited the expenditures to the appropriation. It is also true that one of the most potent arguments used on behalf of this bill was the small cost to the State. This would justify the conclusion that the appropriation was intended to be the limit.

Under established law, the utilities must move their facilities at their own expense, except for such reimbursement as is provided in this special act. It is a moot question as to whether a utility that could qualify for reimbursement except for lack of available funds would be entitled to pro-rating from the previously paid utilities. Obviously, it is not the duty of the Commission to anticipate the exhaustion of the funds and to plan for pro-rating.

To be specific, let us presume that the first three projects used up all but $5,000 of the appropriation and that the fourth project to be put out for bids would require $10,000. The Commission could do nothing more than to notify the utility that only $5,000 was available.

In other words, the exhaustion of the special kitty for the special subsidy would end the special situation and the general law would prevail. It would be necessary for the utility to seek further legislative aid.

Another contingency that might arise would be the letting of contracts during the first year that would require more than the $12,500 appropriation. It is my opinion that the Commission could *pay out* only $12,500 in that year, but could obligate for payment in the next year.

In other words, the payments during the first year are restricted by the amount available.

L. SMITH DUNNACK
Assistant Attorney General

December 17, 1957

To Albert S. Noyes, Commissioner Banks and Banking

Re: Section 160, Chapter 59, Revised Statutes of 1954, Capital Stock

This will acknowledge receipt of your memorandum of November 25, 1957, in which you ask this office for an interpretation of Section 160 of Chapter 59 of the Revised Statutes of 1954.

Your question relates to loan and building associations and particularly the last sentences of Section 160, Chapter 59, which read as follows:

> "In order to enable prospective purchasers of prepaid shares to accumulate savings with which to purchase such shares, associations may accept payments, subject to withdrawals from time to time, to be held in share savings accounts to which there shall be credited, at every regular distribution period, such interest or dividends as the directors may determine. The holders of such share savings account shall be considered as shareholders of the association."

You ask:

> "Is it within the province or within the scope of duty of the Bank Commissioner to make a regulation saying in effect that, after sufficient money ($200) is accumulated in a so-called share savings account, that amount must be converted to a prepaid share?"

We are of the opinion that the sentence quoted above from Section 160 shows the clear intent of the Legislature that the only purpose of a share savings account is to accumulate sufficient funds to purchase a two hundred dollar share and that once such sum has been accumulated, then the account should be converted to a prepaid share.

We are, however, of the opinion that the Bank Commissioner does not have the authority to make a rule and regulation requiring that when a share savings account has reached two hundred dollars, it must be converted to a prepaid share. We find no law authorizing the Commissioner to make such rule and regulation and, absent such authorizing law, such rule and regulation would have no effect.

We would also point out that we can find no penalty provision for failure to convert once the share savings account has reached two hundred dollars.

We would suggest that if, in your opinion, conversion is desirable, the Legislature should be presented with the problem of enacting laws that would enable enforcement of such a provision.

FRANK F. HARDING
Attorney General

December 18, 1957

To Maj.-Gen. George M. Carter, The Adjutant General

Re: Liability—Public Use of Armories

. . . You inquire as to the responsibility of the National Guard in seeing that liability policies are carried when your buildings are used for public uses such as dances. . . .

While it is doubtful that the State or the National Guard itself would be responsible for accidents which happened in the course of public dances or other public events for which your buildings are used, certainly such accidents place the State in the position of having, possibly, to answer such claims through action taken by the Legislature. Then, too, there is the possibility that some member of the Guard may be personally sued for injuries that may occur to the property under the custody of that person.