

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

“Person” means any individual, partnership, firm, corporation, association or other unit, and the State and all political subdivisions or agencies thereof, except State owned and operated institutions.”

Under Section 4 the Milk Commission has jurisdiction over sales
“. . . By any person . . . to another person. . .”

From the above it appears to have been the intent of the Legislature to include political subdivisions or agencies of the State within the provisions of the Maine Milk Control Law.

GEORGE A. WATHEN
Assistant Attorney General

March 31, 1958

To Lloyd K. Allen, Manager, Industrial Building Authority

Re: Maine Industrial Building Authority Advertising

As a general rule a governmental department or agency has only the powers expressly granted by statute. Section 6 of Chapter 38B sets out the powers of the Industrial Building Authority. Section 11 of Chapter 38B states that the Authority “may in its discretion expend out of the fund such moneys as may be necessary for the expenses of the Authority, including administrative, legal, actuarial and other services.”

Reference to Chapter 38A, Revised Statutes of 1954, indicates that the Department of Economic Development has been set up to disseminate information to promote industry within the state and advertise the advantages of the state. See Section 4 and Section 6A of Chapter 38A. Therefore, it is my opinion that this department should handle advertising and promotion of the advantages of the Industrial Building Authority.

GEORGE A. WATHEN
Assistant Attorney General

April 1, 1958

To Carleton L. Bradbury, Banking Commissioner

Re: Group Life Insurance

In answer to your memo dated March 3, 1958, containing two questions . . . may I submit the following answer, using the word “bank” to include a mutual savings bank, trust company, and loan and building association:

Question 1. Is it within the authorized corporate powers of a state-chartered mutual savings bank, trust company, or loan and building association to offer group life insurance to certain real estate mortgage borrowers by use of a Group Insurance master policy, provided the form of the policy and its underwriting is in compliance with applicable statutes?

Answer. Section 18 of Chapter 59, R. S. 1954, requires each bank to cause fire insurance to be placed on all real and personal property on which it holds a mortgage. It further states that the bank may require other kinds of insurance to be carried on any interest it may have in its own property or in that of others.

Subsection II of Section 164 of Chapter 60, R. S. 1954, permits the sale of group life insurance to a creditor to insure its debtors who owe money to be repaid in installments. Since there is no exclusion of banks, it is clear they may purchase this insurance.

To say that, having purchased the insurance, the bank may not offer it to those for whose mutual benefit it was purchased offends good reason.

As far as the offering of insurance, as being within the corporate powers of a bank, is concerned, the bank only does so as a banking service. The contract is fixed, and the part of the bank is purely ministerial or clerical. Savings banks, trust companies, and loan and building associations are given general powers with respect to their specific functions established by statute. (See Ch. 59, Sec. 28 on savings banks; Ch. 59, Sec. 90 on trust companies; and Ch. 59, Secs. 158 and 170, and *Smith v. Bath Loan & Building Association* on loan and building associations, all of which provide sufficiently broad coverage for the exercise of the banking service which is the subject of this inquiry).

The usual charter of a bank is broad and general in character with respect to banking powers. The specific powers and duties are set forth and other related powers are permitted in a general statement. The purpose of this is to allow for unforeseen developments in banking methods and changes in financial philosophy which might otherwise necessitate constant revision of the charter of each bank. Therefore, unless the charter specifically forbids the offering of such a service, a bank may offer group life insurance according to the terms of the applicable statute. (Ch. 60, Sec. 164).

Question 2. If dividends are paid to the bank by the insurer, is the mutual savings bank, trust company or loan and building association under obligation to distribute such dividend pro rata to insurance certificate holders or may such dividends be credited to the general funds of the bank?

Answer. On this question, Maine law appears to be silent. As for a bank which requires the certificate holder to pay the premium on the group life policy, there is perhaps a question as to whether a dividend returned to the policyholder ought to be distributed among the certificate holders instead of being credited to the general assets of the bank. Apparently this question has never arisen in Maine. Thus it behooves us to apply whatever logic and principle may be found in determining an answer.

The owners of a corporation are entitled to a pro rata distribution of the earnings of the corporation properly allocated to surplus and declared as dividends. It should be pointed out in conjunction with this statement that we are now being called upon to discuss the rights of borrowers from a bank which would include non-owners as well as owners. As far as the non-owners are concerned, there is no question as to whether they have any right to a pro rata distribution of a dividend declared for the policyholder, which is the bank. This would be a matter for the decision of its directors.

The result of the offering of a group life insurance plan to the mortgagors of real estate is of definite benefit to all the owners. Whether the benefit is direct or indirect is debatable but inconsequential. On the other hand, the costs of accounting, issuing the insurance certificates, and the processing of claims under them, functions usually handled by the bank, are paid from general operating expenses. Thus it would seem reasonable that any dividend paid on

the group life insurance should accrue to the general assets of the bank to offset these expenses.

As a practical matter, the attempt to devise an equitable formula for the pro rata distribution of such a dividend to certificate holders presents a formidable problem. It would be difficult, if not impossible, to determine whether a part of the dividend should go to a mortgagor whose loan was paid prior to declaration of the dividend, to the estate of a mortgagor whose death resulted in a claim by the policyholder, and to a mortgagor who terminated his insurance prior to the declaration of the dividend. Superimposed on this is the problem of determining whether a factor should be used to account for the average amount of the loan outstanding from each mortgagor over the dividend period. Once devised, the distribution formula might well result in the issuance of a multitude of checks or credits for insignificant amounts of money.

Add to this that after the first policy year the group premium rate is subject to adjustment based on the claim experience which usually results in a smaller dividend, or none, the following year, and the substance of the problem disintegrates.

While legislation to remove any doubt is desirable, pending such legislation reason demands we decide that a dividend paid to a bank on a policy of group life insurance covering certain mortgagors of real estate be credited to its general assets.

ORVILLE T. RANGER
Assistant Attorney General

April 9, 1958

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

Re: Maine Maritime Academy

This is in reply to your request to answer several questions posed by the Federal Department of Health, Education and Welfare in connection with the desire of the Maine Maritime Academy to become "covered" under the Old-Age and Survivors' Insurance.

You advise us that a determination by Federal officers as to the eligibility of employees of the Academy can be made only if the Attorney General answers the following questions:

QUESTIONS

"(1) The Attorney-General rules

- (a) the Academy is a political subdivision of the State as described in this letter; (juristic entity, legally separate and distinct from the State)
- (b) the Maine Law permits a referendum, and
- (c) the Maine law for purposes of this referendum and Old-Age and Survivors' Insurance coverage permits the Maine State Retirement System, as it applies to this political subdivision, i. e., the Academy, to be deemed a separate retirement system; . . ."